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Citation: 2018 FPSLREB 78

Federal Public Sector Labour Relations and Employment Board Act and *Federal Public Service Labour Relations Act*

Before a panel of the Federal Public Sector Labour Relations and Employment Board

BETWEEN

ANGELA WALKER

Grievor and Complainant

and

DEPUTY HEAD
(Department of the Environment and Climate Change)

Respondent

Indexed as
Walker v. Deputy Head (Department of the Environment and Climate Change)

In the matter of an individual grievance referred to adjudication and of a complaint made under section 133 of the *Canada Labour Code*

Before: Margaret T.A. Shannon, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Grievor and Complainant: Michael Korbin, counsel, and Christopher Schulz, Public Service Alliance of Canada

For the Respondent: Sean Kelly and Joel Stelpstra, counsel

Heard at Vancouver, British Columbia,
November 15 to 18, 2016; June 6 to 9, July 25 to 28, and August 15 to 17, 2017; and January 16 to 19, February 13 to 16, and March 20 to 23, 2018.

REASONS FOR DECISION

I. Individual grievance referred to adjudication and complaint before the Board

1 The grievor and complainant, Angela Walker (referred to throughout as "the grievor"), alleged that the respondent (the Deputy Head, Department of the Environment and Climate Change) (referred to throughout as "the employer") terminated her employment without cause. She also alleged that the termination was retribution for a complaint she made under the *Canada Labour Code* (R.S.C., 1985, c. L-2; *CLC*), in violation of its s. 147.

2 On June 19, 2017, *An Act to amend the Public Service Labour Relations Act, the Public Service Labour Relations and Employment Board Act and other Acts and to provide for certain other measures* (S.C. 2017, c. 9), received Royal Assent, changing the name of the Public Service Labour Relations and Employment Board and the titles of the *Public Service Labour Relations and Employment Board Act* and the *Public Service Labour Relations Act* to, respectively, the Federal Public Sector Labour Relations and Employment Board ("the Board"), the *Federal Public Sector Labour Relations and Employment Board Act*, and the *Federal Public Sector Labour Relations Act* ("the *Act*").

II. Summary of the evidence for the grievance

A. For the employer

3 The grievor was the operations manager for the employer's Coastal District of British Columbia. She was responsible for the operations of and managing the staff in its Vancouver and Nanaimo offices, including the environmental enforcement officers.

4 One officer, Ken Russell, filed a harassment complaint against the grievor in January 2014. The parties were separated in March 2014, at which point Mr. Russell began reporting to Peter Krahn.

5 Ultimately, four of his harassment allegations were upheld, which were that on May 15, 2012, the grievor made inappropriate remarks to his coworkers about how he had been successfully transferred to the Nanaimo office; that on March 13, 2013, she excluded him from shotgun practice without providing an explanation; that on August 14, 2013, she unilaterally cancelled his swift-water rescue course without any notice to him; and that on October 11, 2013, she compelled him to take a management course in either Edmonton, Alberta, or Gatineau, Quebec, when he requested to take it when it was offered in Vancouver.

6 According to the employer, when the grievor received the Harassment Investigator's preliminary report, she went on the offensive. She approached and attempted to intimidate Patrick Fraser, who had been interviewed as a witness in the investigation. On December 28, 2014, she emailed her supervisor, advising him that she would likely have to take action, which would leave the employer with a black eye in the next four to six months. The employer alleged that she made veiled threats to her supervisor in a conversation on February 12, 2015. Then, on March 31, 2015, despite no longer being Mr. Russell's direct supervisor, she reviewed his electronic personnel records in PeopleSoft (the employer's human resources management software) to determine if he had made access-to-information (ATIP) requests during working hours.

7 On April 2, 2015, the employer notified the grievor that it had received the final harassment investigation report. On April 3, she filed a report that stated that Mr. Russell was a threat to her and that demanded that the employer take steps to protect her as it was required to under the *CLC*. It investigated her complaint and concluded that Mr. Russell posed no threat to her.

8 On April 10, 2015, the employer advised the grievor that the harassment investigation report would be released in 48 hours. On Sunday, April 12, 2015, she contacted the security officer at the Burrard Street office in Vancouver where she worked and requested that Mr. Russell's access to the office be cancelled. On April 13, 2015, the security officer contacted Marko Goluza, the grievor's supervisor, to confirm the request. When she had cancelled Mr. Russell's access as requested, the security officer had assumed that the grievor had had Mr. Goluza's authority to make the request.

9 When the employer asked her why she had done this, the grievor sent a disrespectful email to her supervisor and put an out-of-office message on her email account advising anyone who wished to contact her to contact the employer's labour relations office in Montreal in her absence, which the employer considered was insubordination.

10 On May 11, 2015, the grievor was alleged to have continued to harass and bully Mr. Russell and Mr. Fraser by launching a fact-finding investigation into an incident she had known about for months. She had specifically been ordered not to, but she chose to anyway. That same day, she made a number of inappropriate comments in front of other managers about her supervisor allegedly influencing the outcome of her health-and-safety complaint.

11 On approximately April 13, 2015, the employer decided to investigate the grievor's misconduct, including her harassment of Mr. Russell and her insubordination. She was advised on May 11 that the investigation would proceed and that any disciplinary action related to the harassment complaint would be held in abeyance pending the outcome of the investigation.

12 During the summer of 2015, Margaret Meroni, Director General of the Environmental Enforcement Directorate, met with the witnesses and the grievor. As a result of its investigation, the employer decided to terminate the grievor's employment in September because of her harassment of Mr. Russell and the series of 11 incidents of misconduct she had committed.

13 The grievor was terminated for allegations related to Mr. Fraser and his return to work, the allegations of her PeopleSoft access, her request to suspend Mr. Russell's access to the Burrard Street office, the results of an interview with those who reported to her about conflict in the Nanaimo office, and her comments at the May 11, 2015, managers' meeting, when she reported to Mr. Goluza's management team that he had tried to convince an officer not to cooperate with an investigation being led by Gordon Leek who was conducting the threat risk assessment related to allegations concerning Mr. Russell having committed acts of workplace violence. The grievor reportedly said that "… [Mr. Goluza] may not agree but the officer should be interviewed by Mr. Leek."

14 According to the grievor, the source of this statement was a rumour she had heard, and she had merely advised him of it. If she was aggressive, it was due to the situation with Mr. Russell. None of her conduct was intended to harm the employer; she was merely protecting herself. The employer had no cause to discipline her, let alone to terminate her employment.

1. <u>Mr. Russell</u>

15 Mr. Russell testified that before being transferred to the employer's Nanaimo office, he worked in Yellowknife, Northwest Territories, and Prince George, B.C., for the employer. Shortly after his arrival in Nanaimo, the grievor became his supervisor.

16 Mr. Russell's peers nominated him for the Queen's Diamond Jubilee Medal for his work with sport fishing lodges in British Columbia with respect to them dumping toxic waste into sport fishing areas. The grievor supported the nomination. The

employer's chief enforcement officer, Gordon Owen, notified Mr. Russell of his nomination. The Regional Director General presented the award to him at a gathering at the Vancouver regional office. After he received his medal and plaque, photos were taken of Mr. Russell alone, with the group of award recipients, with the director general, and with the Regional Director General and Mr. Goluza. Mr. Russell asked the grievor to be in the last picture, but she refused. She refused again when Mr. Goluza reiterated the request. According to Mr. Russell, this embarrassed and humiliated him.

17 When Mr. Russell started reporting to the grievor in the early spring of 2010, the Nanaimo office was dealing with a heavy workload, and he carried what he described as a heavy caseload composed of files carried forward from his time in Prince George and new files he had assumed on his transfer. Mr. Russell testified that his colleagues in Nanaimo were in the same situation and that as a group, they decided to approach the grievor to secure additional resources to shoulder some of the work. When Mr. Russell, Mr. Fraser, and Jarrett Brochez raised it with the grievor and asked her if it would be possible, according to Mr. Russell's evidence, her response was that if it was possible it would be an open competition and "not some secret, back room, old boys' deal as was the way when [Mr. Russell] got the job in Nanaimo".

18 This comment, made in front of Mr. Russell's colleagues, embarrassed him. According to his evidence, it was common practice in the department to make lateral transfers at-level, which was how he secured the position in Nanaimo, as had Mr. Brochez. Mr. Fraser had been successful in a competition for his position. According to Mr. Russell, the grievor's comment "insinuated that [Mr. Russell] had received [his] deployment through some unscrupulous back room deal." He testified that he was taken aback, shocked, and embarrassed.

19 In August 2012, Mr. Russell had to take sick leave. On April 10, 2013, after having returned to the workplace in March, the grievor informed him by email (Exhibit 5, tab 8) that he was required to undergo a fitness-to-work evaluation, which contained 10 questions. He did as requested and went to his physician for the evaluation. The Doctor responded that Mr. Russell was fit for all duties (Exhibit 2, tab 9). He sent the Doctor's response to the grievor and Mr. Goluza on April 12, 2013. The grievor expected a response to each of her 10 questions, but she did not ask for any further clarification, according to Mr. Russell.

20 The demand for the evaluation followed a March 26, 2013, inquiry from the grievor about the need for Mr. Russell to renew his fish and game club membership,

which was required for him to maintain his shotgun proficiency. Inspectors must carry shotguns when performing their duties, to protect them from predators. As carrying firearms was a requirement of Mr. Russell's position, he was required to recertify his qualifications (Exhibit 5, tab 7).

21 Mr. Russell asked the training officer whether it would be possible for him to complete his recertification while he was in the regional office between April 29 and May 2, 2013. A use-of-force recertification practice had been scheduled during that time, which was required for all officers. As the policy on use-of-force recertification had changed that year to requiring it only every other year, the use-of-force session was only a practice, so Mr. Russell asked the grievor if instead he could use the time for his firearms recertification. On April 16, 2013, she responded that it would not be possible since she was consulting Labour Relations on the fitness-to-work evaluation response from his doctor. Therefore, Mr. Russell missed his firearms recertification and had to do it later on. He testified that his absence at the firearms recertification was noted and that people asked about it. He felt that the grievor's denial of his right to attend the recertification was unfair and embarrassing.

22 As part of the annual performance review process, employees develop learning plans with their managers. Mr. Russell did this for fiscal year 2013-2014 (Exhibit 5, tab 12). In it, he and the grievor identified that he had to complete the swift-water rescue training course, which was required of his position. He registered for the session to be held from August 20 to 23, 2013, in Chilliwack and made plans to travel there with another employee. He notified the grievor of this on August 12, 2013, and asked her to approve his training application (Exhibit 5, tab 15). He fully expected it to be approved as he had registered for the mandatory course at the time and place identified in his learning plan.

23 That same day, Mr. Russell was assigned the responsibility for what was known as the Harmac spill. Mr. Russell received an email from the grievor advising him of this assignment at 15:46 (Exhibit 5, tab 16). He emailed her his training request at 13:54. The spill had occurred 45 days earlier, on June 26, 2013, and had resulted in the release of untreated effluent from a pulp and paper plant. It had previously been assigned to another enforcement officer. According to Mr. Russell, this assignment and the training scheduled for August 20 did not conflict.

24 Mr. Russell received and reviewed the "Deposit Out of the Normal Course of Events Report" (DONCE) on August 14. He struggled with the terminology it used, and

he had to research the terms before conducting any interviews at the mill to in his words avoid being "snowed" by mill personnel. His intention was to treat this file just like any other file that was assigned to him. He advised the grievor of this via email (Exhibit 5, tab 17). There was nothing time sensitive about this file that required treating it otherwise, according to the grievor. The only time-sensitive evidence of the spill would have been proof of the material released and any dead fish or wildlife, which would have been long gone by the time the file was assigned to Mr. Russell.

25 In the afternoon of August 14, Mr. Russell received an email from the training provider advising him that his training had been rescheduled to September 16 to 18 in Nanaimo (Exhibit 2, tab 18). It surprised him as he had not been consulted on the rescheduling and had not done it. He contacted the training provider to find out whether it was a mistake and was advised that the grievor had done it over the phone. Shortly after receiving the email, he received one from the grievor advising him that she had inquired as to whether it would be possible to reschedule his swift-water rescue training course since the training provider had a waitlist. He testified that he had had absolutely no discussions with her about changing the training dates before it was done.

26 According to what the grievor told Mr. Russell in her August 14 email at 14:44, she decided to have his training rescheduled to allow him more time to address the Harmac spill and to facilitate his ability to gather time-sensitive evidence. The Nanaimo training was chosen because it saved Mr. Russell travel, which she stated he had identified as being hard on him; it reduced the cost to the employer; and it occurred before the time he had requested as leave for hunting season. He testified that he had never told the grievor that travelling was hard on him. He was blindsided by the change. They had not discussed changing the course dates or the timelines for the Harmac spill work. The change meant that he had to advise another officer that they could no longer travel together to the course in Chilliwack, which he testified was embarrassing, since that person wanted to know the reason for the sudden change.

27 As part of Mr. Russell's learning and development plan in July 2013 (Exhibit 5, tab 12), the grievor had identified that he was to complete a project management course in either Gatineau or Edmonton. This course was identified as professional development. According to Mr. Russell, it was not considered mandatory training. The grievor suggested that he take it in place of his preferred professional development course, which was cost prohibitive. He did not want to complete the project management course but agreed to take it to get out of the performance review meeting

as she insisted that he agree to take it. He testified that he would have done anything to get out of that meeting because of the way she was treating him.

28 As the months went on, Mr. Russell's caseload was such that he felt he could not afford the time if he attended the project management course in Gatineau as scheduled. He asked to be able to take it later (March 3 to 7, 2014) in Vancouver instead. The grievor refused and directed him to go to a session in Edmonton, Gatineau, or Saskatoon so that it would not fall off the radar. He testified that he felt pressured to take the course.

29 The grievor's insistence that he take the project management course in Gatineau, Edmonton, or Saskatoon and the tone of her emails made Mr. Russell feel pressured to find employment elsewhere. He expressed as much to the grievor in an email (Exhibit 5, tab 21), to which she responded that because of the statements in his email, she was seeking labour relations advice. Ten days later, on October 28, she agreed to allow him to take the course in Vancouver as long as it was completed within fiscal year 2013-2014, but her reasons for agreeing were confusing, according to him. He never did take the course as he went on sick leave in November 2013 and did not return until March 2014.

30 On January 14, 2014, while he was on sick leave, Mr. Russell filed a harassment complaint against the grievor. Before doing so, he met with her to inform her that her behaviour towards him was unacceptable, as required by the employer's harassment prevention policy. She was disgruntled at the meeting. According to him, rather than understanding his concerns with her behaviour, she repeatedly yelled at him. According to his evidence, such a meeting is the first step in the harassment complaint process.

31 Once he filed his formal harassment complaint, Mr. Russell was assigned to work on developing a process for inspecting gas and oil industry establishments. He was also to develop training for his colleagues. Instead of reporting to the grievor, he was to report to Mr. Krahn. Mr. Russell and the grievor were to have no contact even though for administrative requirements, such as items requiring budget expenditures, and for operational and logistical needs, such as travel claim approvals, Mr. Russell still reported to her. This was all part of the return-to-work plan developed with Mr. Goluza.

32 A consulting firm, Quintet Consulting, investigated the harassment complaint. The Investigator concluded that harassment was founded in five incidents

identified by Mr. Russell, including the grievor's "old boys" comment, her denying his opportunity to participate in the shotgun practice, her cancelling the swift-water rescue training course without consultation, her requirement that he take the project management course outside British Columbia, and her curtailing his access to the Burrard Street office, which all amounted to harassment and to serious breaches of the employer's policies.

33 According to Mr. Russell, it was never explained to him that he could not participate in the shotgun practice because he lacked the required preliminary certification. Nor was it explained to him that the doctor's note he provided for the evaluation was insufficient.

34 He objected to the Investigator's conclusion that the grievor's refusal to have her picture taken with him and others at the Queen's Jubilee Medal ceremony was not harassment because the Investigator found that it was known that the grievor had had her picture taken with other employees and that she had been inconsistent in participating in the photo opportunities. Mr. Russell provided the Investigator with a number of photos of the grievor that had been stored on the employer's shared computer drive, which other employees could access. According to him, it was proof that she was not camera shy.

35 Mr. Russell testified that he would resign if the grievor was reinstated and he was required to work with her again.

2. <u>Mr. Goluza</u>

36 Mr. Goluza was the regional director of the Environmental Enforcement Directorate in the employer's Pacific and Yukon Region Enforcement Branch, and among his other responsibilities, he supervised the operations managers in the Pacific Region, including the grievor. He explained that the employer had a number of policies that applied to its employees, including an electronic networks policy (Exhibit 6, tab 74), a harassment prevention policy (Exhibit 6, tab 75), a code of ethics (Exhibit 6, tab 76), and a code of officer conduct, which was specific to the Enforcement Branch (Exhibit 6, tab 77) and applied to all officers working there, including the grievor.

37 In her role as the operations manager of the Coastal District, the grievor reported to Mr. Goluza. She worked from the regional office in Vancouver and was

responsible for a team of nine officers and one administrative support person. Three officers were located in the Nanaimo office (Mr. Russell, Mr. Fraser, and Mr. Brochez). Her role was to administer the district budget and to prioritize enforcement responses within her district as indicated in her job description (Exhibit 8). Enforcement officers are expected to react to pollution incidents and to undertake proactive enforcement activities, both of which require office and field work.

38 According to Mr. Goluza, in 2013, Mr. Russell received the medal for his exceptional work as an enforcement officer. He was absent from the workplace between August 2012 and March 2013 and again from September 2013 to March 2014 for medical reasons. During those times, Mr. Russell also was dealing with the breakdown of his marriage.

39 Again according to Mr. Goluza, in April 2013, the grievor asked Mr. Russell to undergo the fitness-to-work evaluation. He complied, and his physician cleared him for a full return to work. When the grievor became aware of this, she consulted the department's Labour Relations section, which according to Mr. Goluza, was normal.

40 Mr. Goluza testified about the shotgun practice incident, which formed part of Mr. Russell's harassment complaint. It was scheduled for April 16, 2013, and was intended as an opportunity for officers to familiarize themselves with the weapons they carry to protect themselves from predators. It was a regular practice session, but to participate, officers were required to have completed an initial certification course identified by the employer. Without that, an officer is not allowed to attend the firearms practice.

41 The April 16 firearms practice was specific to the Coastal District group and had been organized at the grievor's request. According to Mr. Goluza, Mr. Russell did not participate because the grievor would not allow him to.

42 According to Mr. Goluza's evidence, Mr. Russell filed his harassment complaint on January 14, 2014. In addition, he filed grievances complaining that he was required to report to the grievor. When he was advised of the harassment complaint, Mr. Goluza consulted with the employer's Labour Relations section and was told that Mr. Russell and the grievor had to be separated. So Mr. Goluza developed a new work plan for Mr. Russell and identified a new supervisor for him (Mr. Krahn). As a result, Mr. Russell and the grievor no longer had a reporting relationship from that point, until further notice.

43 During the investigation of Mr. Russell's harassment complaint, Mr. Goluza had no role other than that of a witness. While the investigation was under way, he had very general discussions about the investigation process with the grievor, primarily because of how long it took. Labour Relations had advised him that this type of discussion was acceptable as long as it was limited and general. When the preliminary report into Mr. Russell's harassment complaint was ready for release, Mr. Goluza was aware of it but had no involvement in delivering it to the parties.

44 Mr. Goluza testified about a series of emails from the grievor that had caused the employer concern. On December 2, 2014, she put an out-of-office response on her email account directing people to contact Mr. Goluza in her absence (Exhibit 10). His expectation was that his operations managers would provide a point of contact within their districts and that they would not send anyone directly to him.

45 On December 28, 2014, Mr. Goluza received an unsolicited email from the grievor in which she advised him that the path she was on would likely leave the department with a black eye within the next four to six months (Exhibit 9). This surprised him, according to his evidence. The black-eye comment made him feel threatened and a little bit embarrassed, inadequate, and disappointed.

46 In preparation for a meeting with Mr. Russell to discuss his grievances in February 2015, Mr. Goluza prepared speaking notes. By accident, he forwarded them to the grievor (Exhibit 5, tab 28). His attempts to recall the message failed. Later the same day, they spoke on the phone when she called to ask what the notes were about. She expressed her disappointment that he would take notes of a conversation with her. Even though he told her to correct the notes if they misrepresented the conversation, she made no changes, according to him.

47 The conversation summarized in the notes happened on February 12, 2015, while the grievor and Mr. Russell were still separated and were waiting for the Investigator's interim report. According to Mr. Goluza, the grievor commented that she could continue to be a good and motivated employee or that she could turn into a difficult employee who would cause the department embarrassment, would go to the media or the privacy commissioner, or would file a police complaint. She threatened to go as far as having the Royal Canadian Mounted Police (RCMP) audit the Region's Canadian Police Information Centre (CPIC) access. She wanted to know if Mr. Goluza wanted her to cause embarrassment for him or the department in this respect.

48 According to Mr. Goluza, the only solution the grievor saw to resolve the circumstances that she found herself in with Mr. Russell was to get rid of him. The employer had the right to deploy him elsewhere, and then the grievor could return to her normal high-performing self. She wanted this done before the final report of the harassment investigation was received.

49 Mr. Goluza stated that he was again surprised when he received an email from the grievor advising him that despite no longer being Mr. Russell's supervisor, she had verified his leave records in PeopleSoft to determine whether he had been using work time to file his ATIP requests or whether he had done so when on leave (Exhibit 11). Mr. Goluza found that odd in that she went go out of her way to find out what Mr. Russell was doing when she was no longer his manager. She had previously admitted to Mr. Goluza that she had verified whether Mr. Russell had come into the office while on leave so that he could meet a harassment complaint deadline (see the email in Exhibit 5, tab 27). Again, when she did this, she was no longer his supervisor.

50 Mr. Goluza forwarded the email in question to his director general. Ms. Meroni asked him to forward it to the Director General of Human Resources, who had also found the grievor's actions disturbing. Ms. Meroni decided that the grievor's access of Mr. Russell's leave records should be investigated. As Ms. Meroni requested, Mr. Goluza addressed this as part of the grievor's year-end assessment.

51 At around the time that Mr. Goluza became aware of the grievor's PeopleSoft access, he received a grievance from her related to the delay completing the harassment complaint investigation process (Exhibit 5, tab 30). When they met to discuss the grievance, she commented that if he was just going to do what labour relations said, why was there a reporting structure?

52 According to Mr. Goluza, the first time the grievor made this comment was in November 2014. This time, it was related to his decision to allow Mr. Fraser go to his own physician for a fitness-to-work evaluation after she had proposed two independent doctors to conduct it. Mr. Goluza testified that he agreed to Mr. Fraser's request after consulting with Labour Relations. The grievor was visibly upset when Mr. Goluza advised her of his decision, and she asked him why she reported to him if he would do only what Labour Relations told him to do. She made similar comments again in December 2014.

53 On April 9, 2015, the grievor put an out-of-office message on her email account directing people to consult with Dominique Gilliéron, a labour relations officer

(Exhibit 2, tab 18). This surprised and embarrassed Mr. Goluza, according to his testimony. He stated that he could not conceive of anyone in his group putting Labour Relations as an out-of-office contact.

54 On April 13, the grievor put a different out-of-office message on her email. Again, it again referred correspondents to Labour Relations because she was out of the office and would not be checking her email. In May 2015, at a meeting with Mr. Goluza, she again commented that they should just report directly to Labour Relations.

55 Mr. Russell was required to recertify for swift-water rescue training and registered for a course in Chilliwack, B.C., on August 20, 2015. Before he could take it, a major effluent spill occurred, which he was assigned to investigate. When she assigned it to him, the grievor also unilaterally changed the date and location of that course, according to Mr. Goluza. She did not advise Mr. Russell of the change. He found out when the training company contacted him to let him know that he had been rescheduled for training outside Nanaimo in September. This upset him, as did the grievor's insistence that he take a project management course, agreed to in his work

plan, in either Gatineau or Edmonton, when the same course was offered in Vancouver later on.

56 In January 2015, Mr. Russell and Mr. Fraser were involved in a conflict, which included inappropriate language in the workplace. Mr. Goluza testified that he advised the grievor in February so that she could address the inappropriate behaviour with Mr. Fraser in his upcoming performance review. Mr. Goluza also told her that he would address it with Mr. Russell. There was no further discussion or communication about the matter between the grievor and Mr. Goluza, according to his evidence. Then on May 5, while she and Mr. Russell were separated, the grievor emailed Mr. Goluza (Exhibit 5, tab 42), stating that she was undertaking a fact finding into the incident that had occurred in January. He did not know why the grievor sent it to him, and according to him, he told her that on May 11.

57 When undertaking a fact finding into an incident such as the one between Mr. Russell and Mr. Fraser, it is proper for the manager to talk to a labour relations advisor before starting, according to Mr. Goluza. The grievor refused to, and as is evident in her email to Mr. Goluza, she intended to pursue it on her own. He testified that he told her not to action any fact finding until after the harassment complaint process and Mr. Leek's threat-risk assessment completed.

58 The grievor was also told that it was inappropriate for her to conduct any fact-finding processes involving Mr. Russell while they were separated. Mr. Goluza testified that he never mentioned conducting a fact-finding process into the incident involving Mr. Russell and Mr. Fraser; he just asked her to remind Mr. Fraser of what is considered proper conduct and language in the workplace.

59 At the end of the day on May 11, Mr. Goluza received an email from the grievor confirming that she had spoken to officers who reported to her about the incident involving Mr. Russell and Mr. Fraser (Exhibit 5, tab 44). Mr. Goluza testified that this frustrated him; she would not do as he directed.

60 The grievor and Mr. Goluza attended a management meeting that same day along with the operations managers from the other districts in the employer's Pacific and Yukon Region. During the round-table discussion, the grievor advised those present that the departmental security directorate was conducting a threat-risk assessment following an incident on April 9 in which Mr. Russell swore at his supervisor, Mr. Krahn, when discussing her request that Mr. Russell return documents he had removed from Mr. Brochez' desk in Nanaimo. Mr. Russell was reported to have told Mr. Krahn while referring to the grievor that "the f…ing bitch is not going to get away with it".

61 As part of her round-table discussion, the grievor advised the other operations managers that Mr. Goluza had tried to influence an employee not to participate in the threat-risk assessment. She also stated to them that Mr. Goluza did not take workplace violence seriously because he had countermanded her request to cancel Mr. Russell's access to the Burrard Street regional offices, instead only suspending it for five days.

62 Mr. Goluza testified that he asked the grievor to stop and to clarify what she meant by influencing an employee not to participate. She replied that she was alleging that there was a rumour that he had interfered with the assessment, which she was not accusing him of doing. She continued to advise those present that she had filed a police complaint about the incident and that a security officer had been in her office, measuring for egress points. She also said that she hoped that when Mr. Russell was in the office, he would not confuse her office location with the other offices because Mr. Goluza had taken the time to show Mr. Russell around and had pointed out her office. Mr. Goluza testified that her comments again surprised and embarrassed him.

63 Following the meeting, Mr. Goluza sent a message to the threat-risk

investigator reaffirming that he could speak to whomever he needed to (Exhibit 5, tab 47). He also emailed Labour Relations, recounting the meeting (Exhibit 5, tab 50). Earlier, his director general had asked him to identify incidents of misconduct by the grievor to Michelle Daigle, a labour relations advisor. This meeting was the first time the grievor had ever raised these issues. Mr. Goluza testified that he had never heard any rumours or anyone suggest that he had tried to influence the threat-risk assessment other than the grievor.

64 Earlier on May 11, before the management meeting, Ms. Meroni sent a notice of fact finding to Mr. Goluza for him to deliver to the grievor. The management meeting was at 13:00, and he delivered the notice to her at 15:00. He emailed Ms. Daigle with the summary of the management meeting at 17:34. It was Ms. Meroni's decision to investigate the grievor for misconduct. According to Mr. Goluza, it was not triggered by the April 3 letter from the grievor's counsel detailing the grievor's concern for her safety in the workplace.

65 When asked if he could work with the grievor were she reinstated, Mr. Goluza replied that he could not and that he would seek employment elsewhere if she returned to the workplace.

3. Mr. Fraser

66 Mr. Fraser, a senior enforcement officer in the employer's Nanaimo office, reported to the grievor between 2012 and 2015. He described in detail his recollection of the events of that time, which gave rise to the grievor's termination.

67 He was present at a meeting in May 2012 at which discussions took place about adding additional officers to the Nanaimo office. Also present were Mr. Russell, Mr. Brochez, and the grievor. At that meeting, the grievor commented that Mr. Russell had been posted to the Nanaimo office as a result of the old boys' club and not through a competition for his position. Mr. Fraser testified that he relayed the information about the May 2012 meeting to the Investigator when he was interviewed in the course of the harassment complaint investigation.

68 Mr. Fraser worked in the Nanaimo office when Mr. Russell was transferred there from Prince George. At first, they were friends, according to Mr. Fraser. They worked closely on difficult files. He was friends with the grievor before she became his manager. They shared the same work ethic, with a strong investigative and enforcement bent. According to Mr. Fraser, she was one of his best friends, which ended because of

Mr. Russell.

69 Mr. Fraser wrote notes of a meeting he had with the grievor on December 18, 2014 (Exhibit 16). She had called him to the Vancouver office to discuss his performance and the need for a fitness-to-work evaluation. She noted that she twice mentioned at the meeting the witness interviews conducted as part of the harassment complaint investigation. According to Mr. Fraser's testimony, she told him that she knew what he had told the Investigator in his interview.

70 That meeting had been called under the guise of a performance meeting. Mr. Fraser had objections to it as while it was touted as being about his performance, it was more disciplinary in nature. Once he had her comments about his interview, Mr. Fraser testified that he had felt intimidated by her. She was in a position of authority, and he perceived her comments as veiled threats.

71 At the meeting, Mr. Fraser took the opportunity to request that his building senior duties be returned to him. The grievor had revoked them and had given them to a junior officer in the Nanaimo office. The building senior is the link between the regional director general and the Nanaimo office. She had no authority to revoke those duties, as the regional director general had appointed him, not the grievor. During the meeting, he told her that the way she had removed his responsibilities had been belittling and demeaning and that he considered it a reprisal for his evidence in the harassment complaint investigation.

72 Mr. Fraser was not surprised or upset when the grievor removed his building senior role. He considered it part of her management style. It was "unfair" he thought, but he knew that he had to "suck it up" because he knew that otherwise, he would have continuing difficulties with her, according to his evidence. Other examples of this unfair treatment occurred when his responsibility for approximately $500 000 in government assets was stripped from him while he was on sick leave.

73 In April 2014, Mr. Fraser was responsible for patrol vessels, vehicles, trailers, firearms, and other assets, according to his evidence. When he returned to the workplace in December, he no longer had that responsibility. He was not notified that he no longer had it. Forms relinquishing it to another employee had not been completed. This happened while Mr. Fraser was out of the office on sick leave. When he returned to work, he found out that he had been stripped of this responsibility.

74 Mr. Fraser testified that this was clearly a reprisal by the grievor. She told him that there were deficiencies in how he managed the assets. The deficiencies were based on the opinions of other inexperienced officers unfamiliar with maintaining custodial assets. Mr. Fraser testified he was rebuked for allowing zincs on a vessel to corrode when that was exactly what they were intended for as a means of protecting the vessel from corrosion. He was also rebuked for deficiencies in the boat trailer. The personnel using the trailer had taken it on the road without carrying out a pre-trip inspection, which resulted in a motor vehicle accident. The grievor blamed him for it.

75 Mr. Fraser was also present in the Nanaimo office when discussions took place about shootings at a mill (Western Forest Products). He, Mr. Russell, and Mr. Brochez were strictly talking about an event in the community. During their discussion, Mr. Russell talked about the contributing factors that might have led the mill worker to shoot his coworkers. Mr. Russell hypothesized that it could have been possibly related to layoffs, family issues, or some other reason. These discussions were no more sinister than when the group had discussed the events of "9/11".

76 Like Mr. Russell, Mr. Fraser testified he could not work with the grievor if she is reinstated.

4. Ms. Portman

77 Deborah Portman is the operations manager for the employer's Central, Northern British Columbia and Yukon District and was a colleague of the grievor.

78 On May 11, 2015, Ms. Portman attended the regular regional management team meeting via teleconference. It stood out in her mind because it was the first time at any meeting she had attended that the regional director was accused of doing something improper. Those meetings had a standing agenda, which included discussions and updates on the budget, human resources and staffing, occupational health and safety, and the week ahead and included a round-table discussion. The meeting began as usual. Mr. Goluza provided his updates. After that, the grievor began to deliver her update.

79 She started with a discussion of her budget and then advised that she was involved in a serious occupational health and safety investigation, that Mr. Leek was investigating, and that Mr. Goluza had told people who reported to Ms. Portman not to participate. According to Ms. Portman, the grievor alleged that Mr. Goluza was involved in telling people who reported to Ms. Portman not to participate. She also alleged that

Mr. Goluza brought the person under investigation into the office, walked him around the floor, and showed him where the offices were. In so doing, the grievor is reported to have alleged that Mr. Goluza had ignored his obligation to protect his employees.

80 The grievor went on to tell those in attendance that she could not tell them who was being investigated because that would constitute harassment. In a strong tone, she directed Ms. Portman that it was Ms. Portman's responsibility to make sure her staff participated in the investigation and that if she did not, she would suffer legal consequences.

81 According to Ms. Portman, it was clear that the grievor was unhappy with how things were going in the workplace. After all, she had accused her regional director of illegal and inappropriate actions. The grievor wanted everyone to know it. Her tone at the meeting was very aggressive and accusatory. Ms. Portman's evidence was that it was obvious to her that the grievor was not happy and that when she was not happy, she was aggressive. Even though Ms. Portman attended the meeting by phone, she still picked up on the grievor's dissatisfaction from the tone and the language she used.

82 This was the first time that Ms. Portman saw the grievor direct this type of aggression at Mr. Goluza. She had seen it on a number of other occasions when the grievor had directed her aggression at her or at another manager. Ms. Portman described the grievor as not being a team player, which made her difficult to work with. According to the evidence, anyone who did not share the grievor's opinion was wrong. While she worked well with some, according to Ms. Portman, the majority of the time, she was confrontational. Were the grievor returned to the workplace, Ms. Portman testified that she would look for employment elsewhere. She would not return to the toxic and confrontational environment that existed when the grievor was present in the workplace.

83 The level of friction the grievor caused in the workplace impacted everyone in the region. She had directed her officers not to work with officers from other districts. In one large investigation, in which Ms. Portman's district and the grievor's district worked together, the issue of whether to wear uniforms when serving warrants was raised. When Ms. Portman consulted the grievor about her preference and about what her officers were wearing, the grievor told her that she needed to take a leadership role and tell her officers what to do. When Ms. Portman advised Mr. Goluza that her officers would be in uniform and copied the grievor for her information, the grievor replied by

advising Ms. Portman that from then on, her emails would be deleted unread (Exhibit 23).

5. Ms. Graca

84 Elizabeth Graca was also a colleague of the grievor and was one of the three operations managers who reported to Mr. Goluza. She testified that while she was away on an assignment from 2014 to 2015, the grievor put GPS tracking devices on two of the fleet vehicles their regions shared at a point when the grievor was the acting regional director. One was placed on a vehicle assigned to the Vancouver office, and the other was placed on Mr. Russell's vehicle.

85 This concerned the staff; they raised it with Ms. Graca. They did not trust the grievor's reasons for adding the trackers. They wanted to know why they were being tracked and why their activities were being monitored in this way.

86 Ms. Graca discussed it at a management team meeting in February 2015. When questioned why she did it, the grievor told Ms. Graca that it was a health and safety measure that she had authorized. Ms. Graca did not agree, as employees working in the field had other devices that they used when working alone. In Ms. Graca's opinion, the trackers were not required to protect the employees' health and safety. She was not aware as to whether Ms. Meroni had approved installing the trackers or whether one had been installed on Mr. Russell's vehicle.

87 After the meeting, Ms. Graca spoke to Mr. Goluza about the trackers. They were then removed from the vehicles in her region. She was not aware if they were also removed from the vehicles in the grievor's region. Ms. Graca's staff was relieved when they were removed; the grievor was disappointed, which she expressed to Ms. Graca in an email.

88 On May 11, 2015, Ms. Graca and the grievor had lunch at the grievor's suggestion so that the two colleagues could discuss operational issues, according to Ms. Graca. The invitation was sent via email (Exhibit 25). Ms. Graca testified that she took this as a good sign and that the email was an indication that the grievor wanted to collaborate with her. Until then, Ms. Graca and the grievor had not worked collaboratively as their working styles were so different. In January 2012, Ms. Graca and the grievor had had a falling out, which affected Ms. Graca, her staff, and the workplace in general. At the request of her staff, Ms. Graca sought mediation with the grievor in March 2013. After that, they moved forward, but according to Ms. Graca, she still experienced a lack of trust in the grievor. Their interactions were in her words "guarded".

89 At the lunch, the grievor brought Ms. Graca up to date on recent events, including mentioning that a harassment complaint had been filed against her in 2014 and that the Office of Conflict Management would not release the report of the harassment investigation. She also advised Ms. Graca that she had filed a police report because she feared for her safety. She also mentioned that she was concerned that Mr. Russell had access to the Burrard Street office. Ms. Graca testified that she understood that the grievor's concerns had arisen from the harassment complaint and from her knowledge of Mr. Russell.

90 The grievor told Ms. Graca that she had restricted Mr. Russell's access to the Burrard Street office even though he did not report to her at that time. When Ms. Graca questioned why she would have done that since he did not report to her, the grievor stated that she was concerned that he might appear on the floor where she worked and that he knew where her office was located. Ms. Graca testified that she told the grievor that if she were truly concerned for her safety, she should let Mr. Goluza and Human Resources know and that she should take some time off. The grievor advised Ms. Graca that Security had questioned her about revoking Mr. Russell's access and that she had taped the interview.

91 The grievor advised Ms. Graca that she intended to raise these issues at the regional management team meeting scheduled for that afternoon. In addition to sharing this information, she made what Ms. Graca described as rude comments about senior management and showed her a letter she had received from Ms. Meroni. The grievor claimed that she felt unsupported by management.

92 Later that afternoon, at the regional management team meeting, the grievor stated that she had filed a police report against Mr. Russell and that Mr. Goluza had told certain staff not to participate in the security investigation. Ms. Graca did not remember every word the grievor used in reporting that Mr. Goluza had interfered in the security investigation; she might have reported it as a rumour (Exhibit 3, tab 33).

93 Ms. Graca described the grievor's tone as aggressive, firm, and upset. According to Ms. Graca, it would have been unusual behaviour in a normal meeting but not unusual behaviour for the grievor. She was known to be firm, assertive, obstinate, and aggressive. Ms. Graca testified that she had been the recipient of this type of behaviour from the grievor in the past but that this time, the grievor focused her anger on Mr. Goluza. According to Ms. Graca, during the grievor's statements, she advised those assembled that she had contacted a lawyer to deal with everything.

94 Ms. Graca was aware that the grievor had placed an out-of-office message on her email account directing inquiries to a Labour Relations representative. The grievor had told Ms. Graca that she had done it because her opinion was that since the labour relations officer was dealing with so many of the issues in which the grievor was involved, Mr. Gillieron could deal with the operational issues that her job entailed as well. Ms. Graca told the grievor that this was inappropriate, particularly since there was no organizational relationship between their section and Human Resources.

95 At the end of the day, after the regional management team meeting ended, the grievor showed Ms. Graca the letter from Ms. Meroni outlining the number of allegations against her that were to be investigated. The fact that Ms. Meroni was investigating the grievor shocked Ms. Graca, according to her testimony.

96 Like her colleagues, Ms. Graca expressed no willingness to work with the grievor again should she be returned to the workplace.

6. <u>Ms. Meroni</u>

97 As previously noted, Ms. Meroni was Director General of the Environmental Enforcement Directorate and had overall responsibility for the employer's five regions across the country charged with enforcing environmental legislation. Of the approximately 200 employees for whom she was responsible, 80% were enforcement officers. As part of her responsibilities, she was the second level of the grievance process, and she dealt with the grievor's grievances. As the director general, Ms. Meroni played no role in the investigation of the harassment complaint against the grievor; however, by April 2015, she was aware of it. The harassment investigation process was handled by the chief enforcement officer, Mr. Owen.

98 When Mr. Goluza brought the grievor's conduct to her attention, Ms. Meroni launched a misconduct investigation with the assistance of her Labour Relations representative, who provided guidance and advice on the conduct of the investigation to ensure that it was done fairly and transparently. The grievor was presented with a notice of the allegations against her that provided sufficient information for her to know the case against her. Ms. Meroni denied drafting the allegations in such a general fashion as to withhold information from the grievor. It was important to protect the integrity of the investigation.

99 Information was provided to the grievor at a later date, and her responses to the allegations and the information obtained through the investigation

process were shared with her when she was interviewed. There was no intention to surprise her at the interview. Ms. Meroni intended to obtain the information she needed through questions at the interview. The local Public Service Alliance of Canada (the union) representative asked Ms. Meroni to provide more information (Exhibit 5, tab 49), but she denied the request, following which the union filed a grievance (Exhibit 6, tab 60). After the grievance, additional information was provided, at Labour Relations' recommendation.

100 Ms. Meroni and the Labour Relations Representative interviewed the first witness on May 15, 2015; interviews were finished by May 21, 2015, with the exception of the grievor's. A preliminary report (Exhibit 6, tab 54) was drafted in June that contained all the evidence that Ms. Meroni had heard up to that point. The report would not be finalized until the grievor had been interviewed.

101 By August 14, 2015, Ms. Meroni's fact finding was complete. The grievor was interviewed on August 10, 2015. A preliminary report was drafted based on the evidence of the witnesses interviewed before the grievor and the documents that Ms. Meroni had reviewed. The preliminary conclusions were that the grievor was culpable of misconduct, but they were not finalized until she was interviewed. The information she provided did not change Ms. Meroni's conclusions. The grievor provided no acknowledgment of responsibility or explanation that refuted the allegations.

102 The fact that the grievor had filed numerous ATIP requests and several grievances, that she had retained legal counsel, or that she had taken sick leave had no bearing on Ms. Meroni's investigation and conclusions. The grievor was invited to a meeting with her on June 12, 2015. The grievor did not show up to this or later meetings. According to Ms. Meroni, the grievor provided a questionable excuse for missing the June 12 meeting (Exhibit 6, tab 59). In Ms. Meroni's opinion, it was questionable since meetings with senior management are considered a priority for employees. Further attempts to schedule a meeting with the grievor in June 2015 were unsuccessful. Finally, the grievor was advised that she was to meet with Ms. Meroni on August 6, 2015, and that if she failed to attend, Ms. Meroni would make her decision based on the information she had already received (Exhibit 6, tab 72).

103 On August 10, Ms. Meroni had a series of questions for the grievor, which she did not have the opportunity to raise with her as the grievor would only read her prepared statement. The interview concluded at the end of her statement.

104 Eventually, Ms. Meroni received a written document that contained the grievor's response to the misconduct allegations. In Ms. Meroni's assessment, the document did not address the allegations; it amounted to a strict denial of all of them. The grievor demonstrated no insight or remorse and in fact indicated that she would repeat her actions in the future in similar circumstances. Her input did not alter Ms. Meroni's conclusions. She added text to the preliminary investigation report but did not alter her conclusions as a result of the grievor's prepared statement.

105 The grievor maintained her stand that she was justified in revoking Mr. Russell's access to the Burrard Street office despite the fact that Mr. Goluza had ordered her to refrain from exercising any managerial actions related to Mr. Russell during the period that they were separated, which she was aware of. According to Ms. Meroni, the grievor's opinion was that it was her right to do what she did and that she would do it again, if necessary.

106 Based on an analysis of the evidence before her, Ms. Meroni concluded that the grievor had abused her authority and had deceived the security office when she asked to have Mr. Russell's access suspended. This abuse of authority and inappropriate, deceitful action violated the employer's code of values and ethics in general and the values of integrity and respect in particular.

107 There was no doubt that the grievor accessed Mr. Russell's leave records during the time they were separated, and she had no managerial responsibility or need to access them. She confirmed that she had done so in an email to Mr. Goluza in March 2015. She had accessed records classified as protected; she was not privy to this information. Accessing the leave records as she did constituted a violation of the employer's network policy and the *Privacy Act* (R.S.C, 1985, c. P-21).

108 The grievor never denied accessing the leave records but postulated that she was justified doing so because she collected information on Mr. Russell's activities to report to management.

109 Merely because the grievor had access to the records as Mr. Russell's substantive manager did not entitle her to check up on him at a time when they were separated and when he reported to Mr. Krahn, who was responsible for approving and managing Mr. Russell's leave, according to Ms. Meroni. In his interview with Ms. Meroni, Mr. Krahn confirmed to her that he had been managing Mr. Russell's leave and that he was unaware that the grievor had accessed Mr. Russell's leave records.

110 Ms. Meroni concluded that the grievor's actions violated the standard of integrity under the values and ethics code. In addition, Ms. Meroni concluded that the grievor violated the employer's networks policy by accessing and reporting protected information without authority. The grievor also violated that policy by accessing the employer's records inappropriately and for her own use. By disclosing the protected information as she did, she violated the *Privacy Act*, which prohibits the disclosure and use of protected information for purposes other than that for which the information was gathered.

111 The grievor also violated the confidentiality of the harassment investigation process. The Investigator stressed repeatedly the need to maintain the investigation's confidentiality; the grievor acknowledged this. Still, in December 2014, in a meeting to discuss performance issues and changes to duties with Mr. Fraser that was held in the grievor's office, she brought up the complaint and told Mr. Fraser that she knew what he told the Investigator during his interview.

112 This intimidated Mr. Fraser, according to the comments he made to Ms. Meroni when she interviewed him about it. He told her that he was fearful and concerned with the grievor's breach of confidentiality and the circumstances of how she raised it with him. Mr. Fraser reported his concerns to the Investigator, who reported the breach to the employer.

113 In Ms. Meroni's assessment, this conduct by the grievor was indicative of her belief that she would not be impacted by the outcome of the harassment complaint. When Mr. Meroni asked about this breach, the grievor denied compromising the confidentiality of the harassment investigation process when she spoke to Mr. Fraser. When Ms. Meroni addressed her concerns with the grievor's conduct in the meeting with Mr. Fraser, the grievor reportedly began raising issues she had encountered with his performance. Ms. Meroni concluded that the grievor's purpose was to cast doubt on the reliability of Mr. Fraser's evidence.

114 Ms. Meroni testified that she believed Mr. Fraser's version of the events because he was so concerned with the grievor's conduct in the meeting that he reported it to the Harassment Investigator, who took notes of his phone call. She considered this call significant enough that she wrote a letter to the employer reporting it and referred to it in the final decision. The grievor knew it was inappropriate for her to breach the harassment prevention policy's confidentiality requirement. She had been warned about it throughout the investigation process. Despite this, she took matters into her own

hands, according to Ms. Meroni, and intimidated an employee who reported to her, in violation of the requirement to treat people with respect in the values and ethics code.

115 The grievor demonstrated her disrespect of management when she identified the Labour Relations office as the point of contact in her out-of-office email notice rather than referring anyone trying to contact her to someone within the branch, according to Ms. Meroni's evidence. She reported that the grievor did not view this as disrespectful or inappropriate. Ms. Meroni did not accept the explanation that the grievor did not know who she should include on the message.

116 The grievor was also disrespectful in her response to Mr. Goluza when she was directed not to take any action toward Mr. Russell. According to Ms. Meroni, when the grievor told Mr. Goluza she would take whatever action she deemed appropriate, including disregarding his directions, she was guilty of insubordination. Furthermore, when she stated that Ms. Goluza had influenced an employee against participating in the threat-risk assessment at the regional management team meeting, she called his integrity into question and alleged that he had taken inappropriate actions. He had done nothing to convince an employee not to participate in the threat-risk assessment and had not intervened in any way in the conduct of that assessment.

117 The grievor tried to minimize her statements by claiming that she was "alleging as a rumour" that it had happened, which was irrelevant, in Ms. Meroni's assessment. It was inappropriate of the grievor to raise this at the meeting in front of her colleagues who also reported to Mr. Goluza and to characterize him as she had done. The others at the meeting were not aware of the details of the threat-risk assessment and were surprised by the grievor's comments. According to Ms. Meroni, the grievor's actions were solely intended to undermine Mr. Goluza in front of his management team and were completely inappropriate. At no time did the grievor ever acknowledge that what she had done was inappropriate.

118 Another example of the grievor's disrespect for Mr. Goluza was her insubordination in pursuing an investigation into an incident involving Mr. Russell and Mr. Fraser in the Nanaimo office in January 2015 at a time when she had no managerial function with respect to Mr. Russell. Despite Mr. Goluza giving her a direct order not to pursue any fact-finding investigation pending the completion of the harassment complaint investigation and the threat-risk assessment, she refused to follow the order. However, she indicated to him that she would not contact Mr. Russell.

119 At no time did the grievor acknowledge to Ms. Meroni that her actions were inappropriate; she claimed to be acting out of due diligence. Her opinion was that she was justified in doing what she did and that she was not being insubordinate. Ms. Meroni testified that regardless of the grievor's opinion, she had been insubordinate and disrespectful and had acted without integrity, all of which violated the employer's values and ethics code. And its "Officer Conduct Directive" (Exhibit 6, tab 77) holds enforcement officers to a higher level of honesty and integrity, as they are peace officers.

120 Ms. Meroni concluded that all the allegations of misconduct by the grievor were true. She completed her report and submitted it to Mr. Owen. She was aware that Mr. Leek's threat-risk assessment was underway at the same time as her misconduct investigation. She saw his report (Exhibit 6, tab 53) before deliberating on the questions of misconduct. However, the two investigations were separate and distinct processes. Mr. Leek's investigation played no role in Ms. Meroni's conclusions. She was aware that at the time she submitted her report to Mr. Owen, he was deliberating on the outcome of the harassment investigation.

121 By the time the grievance presentation meeting related to the grievor's termination was held, Ms. Meroni had replaced Mr. Owen after his retirement as Chief Enforcement Officer. The grievor read a statement at the meeting. She did not acknowledge any misconduct or express any remorse. She just continued to defend her actions; she had no insight into her misconduct and its impact on the employer.

122 In Ms. Meroni's assessment, there was no prospect of reintegrating the grievor into the workplace. Neither the grievor nor her union representative provided any evidence to establish that the bond of trust had not been broken. The grievor displayed no recognition or accountability for her actions. Ms. Meroni was faced with someone who had abused her authority and had violated the employer's values and ethics code and its code of conduct for officers and who, based on her own representations, would repeat those violations. There was no remorse and no contrition and consequently, no possibility of rehabilitation.

7. <u>Mr. Owen</u>

123 Mr. Owen was the employer's chief enforcement officer at the time of the grievor's termination. She reported to him through a chain of command, which included Mr. Goluza and Ms. Meroni. He had the delegated authority to terminate the grievor's employment.

124 Mr. Owen first became aware of the situation with the grievor after April 3, 2015. He was responsible for determining the employer's response to the harassment investigation findings released at the beginning of April 2015. He commissioned an investigation into the allegations concerning the grievor's safety after consulting both his human resources and occupational health and safety advisors. Mr. Leek was brought in from Edmonton to conduct the threat-risk assessment into the grievor's allegations about her safety.

125 Mr. Owen received the threat-risk assessment report on May 29, 2015. Even though he had hoped to have the grievor's rebuttal to the final report on the harassment complaint earlier, he did not receive it until August 31, 2015.

126 On May 5, 2015, Ms. Meroni undertook a fact-finding investigation into the allegations of misconduct by the grievor. Mr. Owen supported Ms. Meroni's investigation; it dealt with serious issues related to the conduct of the same employee and problems encountered dealing with that employee in the workplace. These issues were not separate from the issues raised in the harassment complaint or in the threat-risk assessment. Mr. Owen's opinion was that he should deal with the results of all the reports at the same time, as they were connected.

127 According to Mr. Owen, the grievor's response to the harassment complaint was very thorough. She went through each allegation in detail; her responses consistently stated that she had done nothing wrong, that she had made an honest mistake, or that she had been misunderstood. Her responses did not acknowledge any wrongdoing or remorse. She delivered her rebuttal to Mr. Owen via a videoconference that lasted approximately an hour. During that time, some of her rebuttal was off-target and was not related to the harassment investigation. According to Mr. Owen, she consistently justified her actions. She did not recognize that she should not have acted as she had.

128 Mr. Owen testified that he had not given instructions to prepare the disciplinary letter (Exhibit 5, tab 67) in advance of the August 31 videoconference with the grievor. He testified that he could not decide on disciplinary action until he had all the information he needed. However, there was no doubt in his mind that she was culpable of some misconduct and that the harassment findings were serious. The Labour Relations Advisor prepared the letter in question in anticipation of a disciplinary outcome.

129 Following the August 31 meeting with the grievor, Mr. Owen took the three reports and the grievor's rebuttal into consideration, and by mid-September, he had worked through the reports. He put the results of his considerations into a document (Exhibit 6, tab 71) because he was thinking through the situation and wanted to record how he had reached his conclusions. He shared it with his Human Resources contact.

130 Mr. Owen relied on the Harassment Complaint Investigator's description of the facts. He testified that he could not accept the grievor's claims that her personal safety was at risk. Many of her actions left Mr. Owen puzzled, such as, if she knew that the reason Mr. Russell could not participate in shotgun practice was that his certification had expired, why had she not just said so rather than behave as she had? Furthermore, in Mr. Owen's estimation, the only way that she could have known of it was if she had looked at Mr. Russell's personnel records at a time when she was not authorized to.

131 In Mr. Owen's opinion, asking an employee to pick up her child if something were to happen at the use-of-force training was an attempt by the grievor to purposefully cast a shadow over Mr. Russell and to bring his mental state into question. Still in Mr. Owen's opinion, the safety issues she raised, which she did only after the harassment complaint was filed and never during its investigation, were solely intended to raise doubts about Mr. Russell and to bolster her allegations that he was mentally ill. It was improper of her to raise them, particularly when they had been investigated and found not substantiated, according to Mr. Owen's evidence.

132 The grievor's explanation of how Mr. Russell's swift-water rescue training course was rescheduled did not make sense to Mr. Owen. In his opinion, the training company would not have made the change unless the grievor had asked it to. He explained this action as the grievor's attempt to "poke him [Mr. Russell] in the eye".

133 Implicit in the grievor's actions in insisting that Mr. Russell take a project management course at a time and place she determined was that he should find another job elsewhere. According to Mr. Owen's evaluation, she intended to push Mr. Russell out of her team, if not the department, and he did not want to go. While he did initially agree to take the training, he was allowed to change his mind, even if it upset the grievor.

134 The grievor's behaviour towards Mr. Russell was harassment and was indicative of other problems with her performance. While the allegations against her were not serious, her behaviour is evidence of improper management and of abuse of authority. Mr. Owen testified that as the manager, she had to be the grown up; Mr. Russell

might have been a difficult employee, but she was obligated to treat him properly. The conclusion that she was guilty of harassing an employee was not sufficient on its own to Mr. Owen to terminate her employment, but it required significant consequences, such as a permanent demotion to the enforcement-officer level, where she would have had no managerial duties.

135 Mr. Owen also needed to take into account the results of the threat-risk assessment, which according to his evidence did not support the grievor's allegations. Her revocation of Mr. Russell's access to the Burrard Street office breached the directions she was given about her role as his manager while they were separated. She was not authorized to make such a change as she was not his manager at the time, even though she made it appear to the security office that she was. As a peace officer, she was expected to behave honestly, which she did not do in these circumstances. She could have asked Mr. Goluza to have the change made, but instead, she took matters into her own hands and violated the directions she had received from management. Her actions in the circumstances amounted to retaliation. When asked why she did it, she told Mr. Goluza that she would do whatever it took.

136 The grievor had a pattern of disrespecting management's directives concerning her interactions with Mr. Russell as his manager. She checked his leave records to see if he was working on his harassment complaint on company time, which violated not only the separation order but also his privacy. Merely because she could access his leave records did not mean that she was authorized to. In Mr. Owen's estimation, she overstepped her authority to achieve the ends she desired.

137 In the course of the harassment investigation, she breached the confidentiality clause of the employer's harassment prevention policy when she discussed Mr. Fraser's evidence that had been given to the Harassment Investigator in the course of discussing his performance and the possibility of the Nanaimo office closing. Mr. Owen described this as an attempt to intimidate and tamper with Mr. Fraser as a witness.

138 Mr. Owen described the grievor's actions as bizarre, particularly since her job was to carry out investigations, and she did exactly what she ought not to have done. Mr. Owen was concerned that both he and the department could no longer trust her; her actions were embarrassing to him and the department. She demonstrated a lack of judgement throughout this time, including when she left the out-of-office email message that anyone requiring assistance in her absence should consult with the Labour Relations

Officer. Enforcement officers have a higher security clearance than do labour relations officers and have access to information that labour relations officers are not entitled to see, by virtue of their security clearance level. Her actions opened the department to risk and brought her judgement into question.

139 Mr. Owen was also concerned by the grievor's lack of remorse and lack of judgement. At no time did she say that she should have done things differently, which further eroded her relationship with the employer. The comments she expressed that Mr. Goluza attempted to interfere with a witness were very serious and were heightened by the fact that he too was a peace officer. They were disrespectful and could have had a very significant impact on his career. She undertook an investigation into conflict allegations in the Nanaimo office, which involved Mr. Russell, even though she was directed not to.

140 Mr. Owen testified that the grievor's logic "boggles [his] mind". He questioned what train of thought would tell her that it was a good thing to conduct an investigation when she had been told not to, especially since it would violate the separation. In his assessment, her findings were irrelevant, and her investigation was nothing more than another shot at Mr. Russell. Mr. Owen was baffled by the lack of judgement and the poor recognition she demonstrated.

141 By this point, the grievor had crossed the line; she had been insubordinate, she had treated poorly employees who reported to her, she had intimidated Mr. Fraser, she had harassed Mr. Russell, and she had breached the employer's values and ethics code. Mr. Owen no longer felt that the employer could trust her. He testified that in his opinion, she had reached the point that she would not follow directions, and she could no longer be trusted to follow the rules. Termination was warranted, particularly since she had never expressed remorse or contrition. She offered no apology for her actions and did not accept that she had done anything wrong.

142 Everything had come down to a question of ethics. The grievor's actions had demonstrated poor judgement. In Mr. Owen's assessment, she was directly insubordinate and had acted completely inappropriately. The employer did not know what she would do or how far she would go to achieve her ends. Mr. Owen testified that he believed that she would stop at nothing to achieve her objectives. He described her actions as being so far over the line that the employer could not trust her to act

according to its standards and those set out by the Treasury Board and her branch. She lacked integrity, judgement, and respect for others. She had breached the privacy of people who reported to her, and she had intimidated witnesses; her actions could not withstand public scrutiny, according to Mr. Owen.

143 According to Mr. Owen's evidence, the grievor used her position to advance her ends and to disadvantage others. The way she conducted herself destroyed the employer's trust in her. As a peace officer, she had powers above those of a normal civilian. Mr. Owen asked himself, since she was prepared to breach all these obligations, would she breach others in the course of an investigation? Would she not go equally far in pursuit of a criminal case? Therefore, he concluded that the employer had sufficient grounds upon which to terminate her.

144 Her behaviour could not be rehabilitated. Her disrespect for the employer's values and ethics could not be cured through training. The grievor never expressed any remorse about, insight into, or acceptance of her actions or of how they were inappropriate. To this day, she does not believe that she did anything wrong. Her failure to recognize that she did something wrong precludes rehabilitation. Throughout the process of determining what should be done with her, Mr. Owen testified that he kept expecting remorse from her but that it never came in any heartfelt way.

145 Based on all that, in mid-September, Mr. Owen advised the Deputy Minister that terminating the grievor's employment was recommended. Ultimately, the decision to terminate her was the Deputy Minister's to make. A termination letter was drafted. Mr. Owen delivered it in person to the grievor. He gave her one last chance to explain her actions. Had she expressed true remorse and contrition, the outcome might have been different. Nothing was offered, and her employment was terminated.

146 In cross-examination, Mr. Owen indicated that he had considered the appropriate level of discipline given the grievor's 22 years of service and clean disciplinary record. He also considered the harassment investigation, the threat-risk assessment, the report of Ms. Meroni's misconduct investigation, the value and ethics code, and the conduct directive for officers in arriving at his assessment of the grievor's behaviour.

147 He considered Mr. Goluza's description of the grievor as a good performer who was highly principled and dedicated to the public service. She was a good performer who worked hard, but she was not terminated for poor performance. Mr. Owen described

her as a renegade public servant who would do anything to achieve her goals, including compromising an investigation. She might have been a good performer, but in his words, somewhere, "she went off the rails."

148 If she had a visceral fear of Mr. Russell, there might have been something to mitigate her behaviour, but according to Mr. Owen, it did not explain her misconduct or her other actions; nor did it explain the results of the threat-risk assessment, which he had reviewed. Based on his review of the report and his knowledge of the circumstances, Mr. Owen concluded that the grievor was not really afraid of Mr. Russell. He thought that she was making it all up as a camouflage for her actions against him. This assessment was an important part of his analysis and his conclusion to terminate her employment, but it was not central to his decision. He never asked her if she genuinely feared for her safety.

149 Mr. Owen was brought to the threat-risk assessment report (Exhibit 3, tab 39, paragraph 30). He was also shown its executive summary (Exhibit 30). He testified that he recognized the executive summary and that he used it when considering his recommendation of the level of discipline to impose on the grievor. He did not recall how or when he received it, but he did recall having the version marked as Exhibit 30 with him when he met with her.

150 Finally, counsel for the grievor showed Mr. Owen a third version of the report (Exhibit 31) and referred him to paragraphs 30 and 31, which he did not recall seeing. The version that he used in his deliberations did not contain the comments in paragraphs 30 and 31 of Exhibit 3, tab 39, or Exhibit 31, in which the Investigator concluded that the grievor had a real fear for her personal safety and that of others.

151 At no time did Mr. Owen ask the grievor if she genuinely feared for her safety. He testified that he had trouble believing that she honestly believed that she was at risk. She spread rumours and tried to cast a cloud over Mr. Russell by asking an administrative staff member to pick up her child should something happen to her at self-defence training that Mr. Russell was to attend.

152 The grievor was given the opportunity to address the findings in Ms. Meroni's report when Mr. Owen addressed the harassment investigation report and the threat-risk assessment. She submitted a written submission to Ms. Meroni on the misconduct allegations (Exhibit 3, tab 46). She was not given the opportunity to address Ms. Meroni's conclusions until the meeting of August 31, 2015.

153 Mr. Owen testified that he reviewed Ms. Meroni's report and the grievor's submission when writing his assessment document. At the August meeting, he expected to hear the grievor's rebuttal of the three reports. He did not pose any questions but rather expected her to provide any additional information she thought would help him in his considerations. She provided him with a password-protected electronic written rebuttal (Exhibit 4, tab 52) of the harassment investigation report in advance of the meeting; she provided the password only at the meeting, so Mr. Owen had been unable to review the document in advance. He reviewed it as part of his deliberations.

154 Despite the grievor's rebuttal, Mr. Owen maintained his concern with the fact that she had violated the separation order, had been misleading in her email to the security office when she sought to have Mr. Russell's access to the Burrard Street office suspended, and had abused her authority in having his pass revoked, and her actions in doing so were an act of reprisal. He questioned her motive in repeatedly accessing Mr. Russell's leave records when she had no reason to, particularly if she was as afraid

of him as she professed. It did not matter to Mr. Owen that Mr. Goluza did not address this with the grievor because it demonstrated to Mr. Owen an incredible lack of judgement.

155 Mr. Owen did not find the grievor credible in light of her overall denials and unwillingness to accept any responsibility for her actions. He even accepted Mr. Fraser's evidence over hers knowing that Mr. Fraser had at times suffered from mental illness. He accepted Mr. Fraser's statements that the grievor had breached the confidentiality of the harassment investigation process when she told Mr. Fraser that she knew what he had said to the Investigator. She denied saying it, but given that she denied absolutely everything related to any wrongdoing on her part, Mr. Owen did not find her the least bit credible.

156 Mr. Owen also did not believe the grievor when she said she "alleged as a rumour" that Mr. Goluza had interfered with the witnesses in one of the investigations. She had been disrespectful and had publicly questioned Mr. Goluza's integrity. He should have taken action at the time, but according to Mr. Owen, Mr. Goluza was trying to avoid conflict with her. This was not the only time she had questioned his integrity; she also did so in an email (Exhibit 3, tab 33). In addition to challenging his integrity, she was openly insubordinate when she launched an investigation into conduct at the Nanaimo office between Mr. Fraser and Mr. Russell after being given a direct order not to (Exhibit 3, tab 29, and Exhibit 3, tab 31).

157 Furthermore, the grievor's action of advising anyone who emailed her in April 2015 to refer their inquiries to the Labour Relations Officer created risk and embarrassment to the employer and confusion among those who received her out-of-office response.

158 Mr. Owen was not aware of Ms. Meroni's draft report (Exhibit 3, tab 43), which had been prepared before the grievor was interviewed; nor was he aware that conclusions had been drawn as part of the preliminary report. He maintained that he had not concluded that the grievor should be terminated until after he had all the information despite the fact that the Labour Relations team had drafted two termination letters (Exhibit 4, tabs 49 and 50). One referred to Ms. Meroni's report and was dated August 14, 2014, the same day that report was released. Mr. Owen was unaware of the letters when he met with the grievor at the end of August.

159 By August 17, 2015, Mr. Owen had concluded that the grievor's employment should be terminated based on what he had before him at the time, but he still needed to speak to her before confirming his conclusion. The meeting with the grievor was to occur on August 19 or 29, 2015.

160 Mr. Owen testified that he was unaware that drafts of the termination letter had been prepared before he decided that the grievor's employment should be terminated. When shown notes (Exhibit 35) prepared by the Director of Labour Relations, Mr. Saint-Onge, of their discussion on August 6, 2015, which stated that the decision had been made to prepare the termination letter, Mr. Owen could not recall the discussion. He did recall that on August 6, he scheduled a meeting with the grievor for August 19, and he surmised that Labour Relations had prepared for the worst-case scenario.

161 Mr. Owen denied that he directed Mr. Saint-Onge to prepare the termination letter as early as August 6 even though he admitted that that was the likely outcome of the process that was unfolding and that Labour Relations required time to prepare the necessary documentation. From everything Mr. Owen had seen up to that point, termination was the likely outcome. If something came up in the meantime, he was prepared to delay the decision and to re-evaluate. He admitted that the grievor would have had to convince him at that point why her employment should not be terminated.

8. <u>Mr. Bell</u>

162 Michael Bell is currently Regional Director, Environment Enforcement, for the employer's Ontario Region. Before becoming a regional director, he held an enforcement manager position and was responsible for the training, use of, and management of firearms for the employer. He explained that enforcement officers are allowed to possess, transport, and use firearms for predator protection. There are strict guidelines and criteria concerning training officers and their use of firearms. Once the chief enforcement officer approved issuing firearms to officers in certain geographical areas, they were required to complete employer-sanctioned training before being issued one. The regional director is to ensure that all the criteria of the firearms directive are met.

163 The training requirements are a 1.5-day firearms safety course, which when successfully completed, certifies that the employee has met the requirements for a possession acquisition license. This is a one-time requirement. Then the employee must complete a two-day practical course, during which he or she must demonstrate practical proficiency with a weapon. To maintain that proficiency, employees attend firearms practice one to four times per year. An employee's proficiency certification will expire if he or she does not fire a firearm at one of these practices for more than a year.

164 If the proficiency certification lapses, the employee must complete a one-day refresher course. It is up to the regional director and the officers' managers to ensure that officers are given the opportunity to practice to ensure that they attend the refresher course when it is offered. Mr. Bell was not aware of any provision that prohibited a lapsed officer from attending firearms practices. The restrictions on firearms use is in an operational context; that is, officers would not be allowed to use firearms in the course of their duties but would be allowed to fire weapons to practice. For practice purposes, officers are allowed, and indeed it is necessary, to use the firearms to pass the refresher.

B. <u>For the grievor</u>

1. <u>Mr. Brochez</u>

165 Mr. Brochez testified that he met the grievor late in the summer of 2008 and that during the period in question, he reported to her as an enforcement officer in the Coastal District Nanaimo office. He described her as a very professional manager who was always available. He also testified that she was not someone he wanted to be "on the wrong side of." She always gave him thorough responses to his questions. He stated that her job was her life. In his estimation, her sense of accountability was huge,

but she did not expect her staff to work to her level or to be available at all times of the day or night. She did want them to be busy and to tell her where they were and what they were doing. Biweekly meetings were held at which she updated them on what was going on at her level; each officer was expected to provide a status report on his or her files.

166 The grievor provided Mr. Brochez with suggestions for his professional development and regularly provided him opportunities to get him to the next level, according to his evidence. She understood her employees' interests and strengths and allowed them to focus on their areas of interest. According to Mr. Brochez, he would pitch inspections plans at her as a way of keeping himself busy.

167 At one point, Mr. Brochez testified that he was to serve an environmental protection compliance order for Ms. Portman. He testified that he was not comfortable with it because the subject of the warrant had been convicted 10 years earlier for assaulting a peace officer. Mr. Brochez testified that he contacted the grievor, who told him to stand down and not to serve it. According to Mr. Brochez, she did not want to jeopardize his safety.

168 When Mr. Brochez was the lead officer on a file referred to as the Champion ocean dumping file, the grievor took the lead in preparing the court brief; he said that briefs were her biggest priority. She loved writing them and reviewing them for others. Her greatest expertise was in investigations. For the Champion file, she found an expert witness, took the samples, and was involved every step of the way. According to Mr. Brochez, she redid his brief a couple of times. This indicated to him that she wanted her team to succeed. He described a team retreat in 2014, which was intended to be a team-building exercise using vessels. A team charter was created.

169 Mr. Brochez described his experiences working with Mr. Fraser. He testified that he had concerns about being in the field with Mr. Fraser because of his health. In Mr. Brochez' opinion, Mr. Fraser was a liability to him in the field. Also according to Mr. Brochez, while Mr. Fraser and the grievor were initially friends, once she became his manager, their relationship changed. They would argue on the phone, and he would call her names afterward.

170 Mr. Brochez described Mr. Russell as easy-going and easy to get along with; he was very funny. He wanted Mr. Brochez to join in the fishing lodge initiative he was leading with Mr. Fraser and John Leeden. According to Mr. Brochez, over time,

Mr. Russell became more stressed because of the increased enforcement work involved in the project and the pushback from the sport fishing lodges. He testified that Mr. Russell lost his happy-go-lucky personality and that by 2012, he told Mr. Brochez that he hated his job.

171 In the summer of 2014, Mr. Brochez met with the grievor in the Vancouver offices and was told that two of the employer's Nanaimo office fleet vehicles would be fitted with real-time GPS trackers. One vehicle was assigned to Mr. Fraser.

When Mr. Russell borrowed that vehicle, he did not know that the tracker had been added. When he found out that Mr. Brochez had known about it and had said nothing, Mr. Russell confronted him. He told Mr. Russell that it had not been his job to tell him about it.

172 Again in 2014, Mr. Brochez, Mr. Fraser, and Mr. Russell were talking about the need for a fourth officer in the Nanaimo office. Mr. Fraser put together a proposal, which was presented to the grievor at a meeting in Vancouver. She responded that it was not good enough and that if another officer were ever allocated to the Nanaimo office, the position would be filled more transparently than as to how Mr. Russell was transferred there. According to Mr. Brochez, she alluded to others not having been able to apply when Mr. Russell got his job in Nanaimo.

173 Mr. Brochez described another incident in which Mr. Russell was described as being unhappy with the grievor. It involved an incident from 2014 referred to as the Chase River spill. Mr. Fraser was the only officer in the Nanaimo office at that time and did not know that the spill occurred. It was not reported to the grievor until the following Monday, when news of it was released in the media. On that day, Mr. Russell notified her that the media was aware of the story and that there had been no response from their office for four days, according to Mr. Brochez.

174 The grievor emailed the staff of the Nanaimo office, including Mr. Leeden, advising that she would be there the next day to discuss the situation and that they were all to be present. At that meeting, she stated that she wanted to know what had happened and how the office had responded. When she found out that five days after the spill, the office had still not done anything, it was clear that she was upset. According to Mr. Brochez, she intended to drive home the point that this was not to happen again. He described Mr. Russell and Mr. Fraser after the meeting as being upset that the grievor had come to the Nanaimo office. Mr. Russell was reported to have said that the only

reason she had come to Nanaimo was to discredit two senior officers in front of two junior officers.

175 When the grievor was made a manager, she managed the group such as to keep everyone busy. She wanted her team to work to her strengths, according to Mr. Brochez. When she completed his performance review for 2014, she apologized to him for failing to properly manage the Nanaimo office. According to his testimony, she also promised him that it would never happen again. At that time, Mr. Russell and Mr. Fraser were carrying a total of six files, which upset her. From then on, Mr. Brochez noted changes in her relationships with Mr. Russell and Mr. Fraser. He also noted an increase in talk from both of them about her being out to get Mr. Russell. In Mr. Brochez' opinion, Mr. Russell and Mr. Fraser thought the grievor favoured Mr. Brochez.

176 For part of 2015, no one in the office would speak to anyone else, according to Mr. Brochez. He told Mr. Russell that he could no longer be his sounding board. Mr. Fraser told Mr. Russell that he did not like him. The grievor was told about this, and according to his evidence, she told Mr. Brochez that she felt that he was working in a toxic environment and that it was her duty to remove him from the Nanaimo office. At some point during this period, she directed him to a folder on a shared drive where ATIP requests were stored. When he went there, Mr. Brochez was upset to discover a request from Mr. Russell for all of Mr. Brochez' correspondence concerning Mr. Russell.

177 It especially annoyed Mr. Brochez since it came on the heels of him shaking hands and making up with Mr. Russell. Mr. Brochez testified that he printed the documents and that he left them on his desk in plain sight to let Mr. Russell know that he knew about the ATIP request instead of confronting Mr. Russell about it. In early February 2015, Mr. Brochez was transferred to a new location. He left the ATIP documents on the desk to deliberately upset Mr. Russell. Mr. Fraser called Mr. Brochez and told him that Mr. Russell was upset.

2. <u>Mr. Gauthier</u>

178 Allain Gauthier testified that he reported to the grievor from September 2011 to 2015. He described her as being very engaged in his work; she provided him with a lot of guidance on how to write documents, how to do inspections, and how to do his job in general. She essentially wrote the required court briefs for him and assisted him in other ways to get cases ready to hand over to the Crown prosecutor, such as finding expert witnesses; securing contracts; and attending meetings with the

Crown prosecutor, witnesses, and others. According to Mr. Gauthier, a manager would not normally have time to do this type of work. In his opinion, the grievor was the best manager in the branch with the best knowledge of enforcement. She reviewed all the

work, letters, memos, and briefs — everything that her unit produced.

179 According to Mr. Gauthier, the grievor took interest in her employees' career aspirations, which she would include in their annual learning plans. She knew that Mr. Gauthier wanted to be a wildlife officer; this had been included in his learning plan. Once, when he was out of the country, a vacancy was posted for a wildlife officer position. The grievor contacted him via email to let him know that she had submitted his resume for the position for him. Then, on his last day, when he handed in his badge, she told him that she would hang on to it because she did not think he would enjoy the wildlife job, and she expected him to return to enforcement.

180 Mr. Gauthier described the grievor's management style as very direct. Like Mr. Brochez, Mr. Gauthier did not want her upset with him. According to him, she made sure that only the best quality work went out. If she felt she could trust someone, she reviewed that person's work less. There was a very large turnover on the pollution enforcement team in Vancouver; one person left the Vancouver office, and two left the Nanaimo office while Mr. Gauthier was there.

3. Mr. Lahti

181 John Lahti was another of the grievor's employees. He started in June 2013. He saw her every day he worked for her. According to him, the Harmac spill was initially assigned to Mr. Russell; later, it was assigned to him. In the first five to six months after the spill, Mr. Russell had done approximately two days' work on the file. He had carried out a few interviews and had collected some samples, which the grievor was not pleased with, according to Mr. Lahti. She asked him to complete the work. When he retrieved the files from Mr. Russell, it was apparent that Mr. Russell had made no investigational plan or analysis. Mr. Lahti was required to organize the information and prepare the plan. The grievor went with him to the site, to evaluate his performance in the field.

182 During the investigation of an incident referred to as the Mount Poley spill, the grievor was the lead investigator, and she carried 100% of the workload, according to Mr. Lahti. She guided the team through the use of electronic warrants and their technicalities, using her contacts. Management valued her contribution to the file even though she had not been part of the investigation. Again, she was very active in securing

expert witnesses and protecting the employer's interests. When she was terminated, Mr. Lahti assumed the role of lead investigator, which caused confusion in the team.

183 Like the other witnesses, Mr. Lahti described the grievor as a purpose-driven, focused manager who expected direct responses to direct questions asked particularly about officer activities. She is an expert in environmental investigations and prosecutions. She supported creativity and innovation in problem solving as long as it made sense to her. This description was corroborated by two other of the grievor's former employees who also testified: Ron Graham and Travis Teel.

4. Mr. Leeden

184 Another of the grievor's employees, John Leeden, testified on her behalf. He worked directly with her in the Vancouver office but spent between 30 and 80 days annually working in the Nanaimo office. He described his working relationship with her as positive but said that he never wanted to get on her bad side. According to him, the grievor's primary concern was getting the job done. She was dedicated to the job and to getting it done right. Officer safety was a paramount concern for her. He testified that the grievor supported him in his work by bringing her investigative expertise and analytical skills to each of his investigations.

185 Mr. Leeden was present in the fall of 2014 at the team-building exercise when the team charter was drafted. The grievor brought in a psychologist to work with the team, to improve the workplace. According to Mr. Leeden, the relationship between Mr. Fraser and the grievor was unique. Initially, they were close friends, which could be seen from how they talked to each other. As the years passed, this relationship changed. According to Mr. Leeden, as Mr. Fraser lost interest in his job, their relationship deteriorated. Mr. Fraser routinely referred to her as a "bitch" and used other "colourful vocabulary to describe her", according to Mr. Leeden.

186 Mr. Leeden asserted that Mr. Fraser's health deteriorated and provided examples of how that impacted their working relationship. This caused Mr. Leeden to refuse to be on a boat with Mr. Fraser; Mr. Leeden was worried that Mr. Fraser would put him in a dangerous situation or that Mr. Fraser would have a medical emergency at sea. According to Mr. Leeden, the grievor listened to his concerns, while others higher up in the chain of command did not; they considered Mr. Fraser's situation a personal issue.

187 According to Mr. Leeden, the Nanaimo office team was toxic and dysfunctional because of Mr. Russell. He shared that opinion with the grievor on

numerous occasions. At one point, Mr. Russell allowed Mr. Leeden and others at the Nanaimo office to use a work trailer that was not properly permitted for the road without saying anything.

188 Mr. Leeden described another incident involving both Mr. Russell and Mr. Fraser that took place while in a hotel at Shearwater, B.C. Messrs. Fraser and Russell were in a discussion with the grievor. When Mr. Leeden tried to add to the conversation, since he was the only one who worked with her, Mr. Russell told him to wait his turn. Mr. Leeden said that he left and that when he returned, he told Mr. Russell not to talk to him in that manner, to which Mr. Russell reportedly replied "I will talk to you how the f… I want, when I want."

189 Mr. Leeden testified that he was working in Nanaimo when the grievor wanted to speak to the officers there about the Chase River spill response. According to him, Mr. Russell came out of the meeting with the grievor "furious" and asked, "Can you believe that bitch would question me on that in front of junior officers?" Mr. Russell made many derogatory comments about women, including the grievor, most of which were preceded by "f…ing", according to Mr. Leeden, which he regularly reported to the grievor.

190 According to Mr. Leeden, the grievor tried to distribute the work evenly between the officers in her group. Caseloads varied depending on file size, but a caseload of 50 to 100 cases per year was not unusual if an officer had no major cases assigned. Mr. Russell did not like the grievor interfering with his case assignment. According to Mr. Leeden, managing Mr. Russell significantly impacted the grievor.

191 According to his evidence, Mr. Leeden made it clear to the grievor that he wanted to be transferred to the Nanaimo office. It was in his words "his dream" to move to Vancouver Island. He repeatedly expressed to her his desire to be transferred; he made four official requests and mentioned it in his annual performance review. He was aware that there would be no position for him there unless one of its officers left or a new position was created. He was aware that Mr. Russell had been transferred to Nanaimo from Prince George, which was not the normal process for staffing a position.

192 When in Nanaimo, Mr. Leeden worked primarily with Mr. Brochez. Mr. Leeden and the grievor had had several conversations about his intentions to move to

the Nanaimo office and had included it in his work plan. The grievor supported this move and agreed to help him achieve his goal, according to his evidence. At one point, she intervened with Mr. Goluza in to see if there was any possibility of making it happen.

193 In cross-examination, Mr. Leeden admitted that he had worked very little with Mr. Russell as he remembered only the inspection in Shearwater when they had the disagreement in the hotel. He could remember no other investigations in which they worked together.

194 In 2013, Mr. Leeden spent a lot of time in the Nanaimo office when Mr. Russell was on leave. In 2014, he covered for Mr. Fraser when he was on leave but worked primarily with Mr. Brochez. In early 2014, Mr. Russell was removed from the grievor's team and was no longer present at the team meetings. When he did see Mr. Russell, Mr. Leeden testified that they would say hello to each other but that that was about all.

195 Mr. Leeden admitted that he was annoyed that Mr. Russell had filed an ATIP request against him and stated that he had "had enough of him." While he had never seen Mr. Russell's harassment complaint against the grievor, he described it as comprising "binders and binders". Mr. Leeden had seen Mr. Russell putting together binders in the Nanaimo office after hours.

5. <u>Mr. Saint-Onge</u>

196 Eric Saint-Onge became the employer's director of labour relations and occupational health and safety at its national headquarters on August 3, 2015. He reported directly to Michelle Laframboise, Director General. Mr. Owen and Ms. Meroni were among his clients. Ms. Daigle, Mr. Gillieron, Ms. Laframboise, and Lorie Burton, all of whom were involved in this file, reported to him directly or indirectly. When he started in this position, he received verbal briefings from Ms. Laframboise, Mr. Gillieron, and Brigitte Bertrand about the hot files, including the grievor's.

197 Mr. Saint-Onge became involved in the grievor's file on August 6, 2015, when he had a conversation with Mr. Owen (even though in cross-examination, he conceded that Mr. Owen had been on vacation between July 20 and August 14, 2015, based on leave records submitted (Exhibit 50)). He clearly remembered it being by cellphone but admitted on cross-examination that it could have occurred on August 17, 2015, when Mr. Owen returned from leave.

198 He took notes summarizing this conversation and listing the things that

his labour relations team had to do to support Mr. Owen. During their conversation, Mr. Saint-Onge was aware that Ms. Meroni was scheduled to meet with the grievor on August 10 although he did not remember if Mr. Owen had told him that or if one of his employees had done so during the briefing for his conversation with Mr. Owen. In cross-examination, Mr. Saint-Onge allowed that these notes were more likely from the staff briefing on August 6 than from his conversation with Mr. Owen.

199 The information in his notes indicated the process discussed with Mr. Owen and the labour relations team's view of the process and of what it needed to do to resolve the file. Other disciplinary action had been discussed, but only a termination letter had been noted. According to Mr. Saint-Onge, his role was to discuss all the disciplinary possibilities; the fact that he noted termination in his notes was not indicative of the entire conversation. After the call, he briefed his team on what needed to be done, following which they drafted the termination letter for Mr. Owen's consideration.

200 According to Mr. Saint-Onge, no letters were drafted other than the termination letter because any other letter would have had the same content, except for the disciplinary penalty. To him, it would not have been logical to prepare multiple letters, so only the most difficult one was prepared, which allowed management to swap out the disciplinary penalty as required. The letter he discussed with Mr. Owen was submitted as Exhibit 6, tab 67, pages 3 and 4. Mr. Saint-Onge could not testify as to how it got to Mr. Owen, but he was certain that he did not give or send it to Mr. Owen. He concluded that the team lead responsible for the portfolio must have done so.

201 According to Mr. Saint-Onge, he also made notes of a conversation he had with Mr. Leek. He wanted to understand how the security matter had been dealt with and how it had been finalized. He needed the information to provide support to Mr. Owen. The employer could not proceed with disciplinary action without knowing the outcome of the workplace violence complaint.

202 Mr. Saint-Onge asked Mr. Leek for a copy of his interim report. The anticipated wrap-up date of August 19 was very aggressive and needed to be pushed back for several valid reasons, which had delayed completing the reports. Without all the information, Mr. Owen could not make his decision; therefore, the meeting with the grievor was postponed. According to Mr. Saint-Onge (Exhibit 6, tab 67), it was clear that no decision had been made when the draft letters were prepared.

6. The grievor

203 The grievor testified that at the time of her termination, she had been a public servant for 22 years. She started with the employer in 2005 and became an operations manager on August 23, 2010, after being the successful candidate in a national selection process that included Mr. Russell, Mr. Fraser, Mr. Goluza, and Ms. Graca.

204 She assumed the role in September 2011 when she returned from maternity leave. According to the grievor, when she returned, Mr. Goluza was the regional director. She described their relationship as excellent; they had common priorities and a common interest in investigations. Her new team consisted of nine enforcement officers (six in the Vancouver office, and three in the Nanaimo office).

205 The grievor's work record was spotless, according to her evidence. She had never been disciplined before being terminated. She had never had a grievance filed against her. She had never been sent for sensitivity training as others had said in their testimony. Her performance reviews had always been positive. Mr. Goluza had nominated her for several opportunities. She believed that he considered her a high performer. When he was away on leave in the summer of 2014, he appointed her the acting regional director.

206 In January 2014, the grievor found out from Mr. Goluza that Mr. Russell had filed a harassment complaint against her. She was given the allegations in March 2014 and the supporting documents by June 2014. In all, 26 allegations were to be investigated. Mr. Russell was on leave in January 2014. When he returned in March 2014, he reported to Mr. Krahn rather than to her. This arrangement continued until her termination. Despite this, Mr. Russell's leave profile remained on her list of employees in PeopleSoft as the reassignment was considered temporary at that point.

207 On January 23, 2014, the grievor was told that the harassment complaint was of the utmost confidentiality (Exhibit 5, tab 23). Again, when she was provided with the allegations, she was cautioned about the confidentiality of the process (Exhibit 5, tab 24), and she signed a statement acknowledging the confidential nature of the process and the documents related to it (Exhibit 5, tab 25). She was reminded again when she was provided a copy of the preliminary report (Exhibit 5, tab 26). Finally, when she was given 48 hours' notice of the final report's release, she was again reminded of the confidential nature of the proceedings (Exhibit 5, tabs 36 and 41).

208 The grievor testified that she was stunned by the extent of the harassment complaint against her. She cycled through several emotions, including disbelief, shock, and devastation. In the end, four of the allegations were determined founded. The first was that she had made an inappropriate comment about how Mr. Russell came to be assigned to the Nanaimo office. In her testimony, she denied making any such comment.

209 According to her, while her team was looking at accommodation needs in the Nanaimo office, Mr. Russell asked her about adding another officer there. According to the grievor, he told her that he had a friend who was employed with the province and was looking for a job who would be a good fit for the office. She was aware that staffing such a position would require a transparent process since she had discussed transferring Mr. Leeden to Nanaimo, so she told Mr. Russell that any staffing would require a transparent process, according to her evidence. She did this in front of Mr. Brochez and Mr. Fraser. She said nothing else.

210 The grievor admitted that she was aware that Mr. Russell had been deployed to Nanaimo by the regional director in consultation with Labour Relations and that it was a legitimate staffing method (Exhibit 6, tab 70, page 15). In cross-examination, what she claimed to have said at this meeting was that she would not consider deployments to her team and that she had expressed concerns with transparency in other deployments. She acknowledged that Mr. Russell had been deployed to his position in Nanaimo, that this was a legitimate staffing action according to the staffing policy (Exhibit 60), and stated that there was no "old boys' club involved." She clarified her comments to her team at the meeting in question and made them more precise by stating that she would not consider deployments to her team, yet she sought to deploy and supported deploying Mr. Leeden to a position in Nanaimo despite this position.

211 During this same period, the grievor told Mr. Goluza that Mr. Leeden wanted to relocate to Nanaimo and that she would "clone" him if possible. She told Mr. Goluza in a series of email exchanges that she supported Mr. Leeden's deployment to Nanaimo (Exhibit 59).

212 At the same time, Mr. Russell mentioned that he knew of an officer in the provincial service interested in moving into federal service who would have been a good fit with the team. The grievor told him that she was not aware if someone could deploy from the provincial to the federal public service and that regardless of whether it was possible, the process had to be transparent.

213 The second allegation that was upheld related to the grievor exercising her authority when she denied Mr. Russell the right to attend the district shotgun practice. She strictly denied any wrongdoing in this respect. According to her testimony, she denied him the opportunity because he did not have the required certification to attend and because Mr. Goluza wanted him to complete a gradual return to work.

214 Mr. Russell had been off work from August 2012 to March 2013. When he returned, the grievor embarked on a lengthy consultation with the employer's Labour Relations consultant about obtaining a fitness-to-work evaluation for him. She disagreed completely with the approach taken by Labour Relations and Mr. Goluza. Regardless, the issue had nothing to do with the firearms practice, as Mr. Russell did not have the firearms certification refresher that was required before he could participate in the practice. The fitness-to-work evaluation and firearms safety certification were different and unrelated issues.

215 Despite her insistence that Mr. Russell required a full fitness-to-work evaluation, including a psychological assessment, and Mr. Goluza's determination that a certificate from Mr. Russell's personal physician would be sufficient, the grievor drafted a very extensive letter with 10 questions for Mr. Russell to have his physician answer. Mr. Russell presented the grievor with a very brief one-line response certifying him fit for duty. This surprised her as she had expected a full psychological assessment. She contacted Mr. Gillieron to discuss the doctor's report and was told that unless she had reason to believe that it was not genuine, she had to accept it.

216 In the meantime, according to the grievor's evidence, she had consulted the Training and Learning Coordinator and had asked about letting Mr. Russell participate in the firearms practice without the required firearms certification. According to her testimony, she was told that to participate, he needed a current firearms safety certification. As his certification had lapsed, she denied him the right to participate on that basis. In the meantime, she continued the fitness-to-work evaluation discussion with Mr. Goluza and Labour Relations.

217 After her discussions with Labour Relations did not yield the response that she considered appropriate, the grievor then sought Mr. Goluza's advice after telling Mr. Russell that she was seeking more advice. Mr. Goluza told her to accept Labour Relations' advice. By then, the shotgun practice had come and gone. As a result, Mr. Russell's training was delayed six weeks.

218 In cross-examination, the grievor cited two reasons for refusing Mr. Russell the opportunity to participate in shotgun practice. One was the employer's recertification policy, and the other was her disagreement with Mr. Goluza over the adequacy of the medical note that Mr. Russell had provided.

219 The grievor had an obligation as Mr. Russell's manager to follow the safety requirements; otherwise, according to her, she would have been personally liable if something had happened. She claimed to have followed the Firearms Administration Directive (Exhibit 21) and considered the health and safety of others as would any prudent manager. The grievor admitted she was aware of Mr. Russell's experience with guns. She had taken the Canadian Firearms Safety course with him. He was a member of a local gun club and was experienced with guns, but this was a new course, which everyone had to take even if he or she had already completed the firearms safety course.

220 The grievor testified that she found Mr. Russell's medical note non-responsive because despite 10 questions needing answers, the Doctor answered only one. In addition, the Doctor worked in a walk-in clinic and did not appear to be Mr. Russell's regular physician. She followed the steps that she considered prudent of a manager.

221 The third allegation, which was that the grievor had unilaterally changed the date of the grievor's swift-water rescue training course, was also upheld. Again, she denied any wrongdoing with respect to this allegation.

222 According to her evidence, it was mandatory training identified in Mr. Russell's work plan, but when it was scheduled, Mr. Russell had just been assigned a new file related to the Harmac spill. The grievor identified areas for him to address and determined without consulting him that he needed to conduct interviews sooner rather than later.

223 When he was advised of this new assignment, Mr. Russell was of the opinion that a few weeks would not matter, but after looking at his proposed leave for the next few weeks, the grievor contacted the course provider and asked if she could change his training dates or put him on a waiting list. According to her, the company representative was to email her options but instead switched the training dates. As it turned out, the location also changed to Nanaimo.

224 According to the grievor's evidence, all this happened before she had had

a chance to speak to Mr. Russell about changing the dates, and he never raised any concerns with the switch to Nanaimo. It was clear to both of them that they were working on determining the timelines to obtain sensitive evidence related to the Harmac spill. She stated that her actions were not offensive or harmful and that they had no impact on Mr. Russell. He took his training a couple of weeks later. She testified that she does not accept that her actions had any impact on him or that she in any way harassed him. She explained that she did not want to interrupt his planned hunting trip, but the spill was her priority, and it needed to be dealt with. In addition, having Mr. Russell take the training in Nanaimo rather than in Chilliwack was a fiscally responsible thing to do, since it did not involve travel costs.

225 The effluent spill at the Harmac mill occurred on June 26. Had she allowed Mr. Russell to wait until August 14, as he proposed, the effluent evidence would have been gone, according to the grievor. Spills have time-sensitive evidence. She needed him to take care of business while the digital records existed and the memories were still there. He needed to get on-site to effect a tour and to obtain representative samples, according to her. She testified that he claimed to be doing research because he was not familiar with the mill in question. In her opinion, researching pulp mill processes on the Internet would not have helped him in his investigation.

226 Mr. Russell emailed the grievor at 13:42 on August 14, 2013, asking for her preferences with respect to his action plan for the Harmac spill (Exhibit 5, tab 17). Rather than responding to his inquiry, she contacted Raven Rescue at 13:42 to inquire about rescheduling his training, without having ever mentioned to him that she was considering such a change. According to her evidence, she did it because she had concerns that he was unfocused and floundering and because he was not, in her opinion, "a strong performer".

227 Within approximately 40 minutes of sending his email, Raven Rescue advised Mr. Russell that his training had been rescheduled for the Nanaimo session (Exhibit 5, tab 18). Two minutes after he received confirmation of that change, the grievor emailed him to advise him that she had inquired about making that change (Exhibit 5, tab 19). By then, it had already been changed. She denied ever requesting the change. According to her evidence, she merely inquired about the possibility of it.

228 The fourth allegation that was upheld for which the grievor also strictly denied any wrongdoing also related to training. Mr. Russell had expressed an interest in employment outside the department in the oil and gas industry. He suggested a course

that was very expensive and cost prohibitive, so the grievor suggested a project management course, which he agreed to take. She told him to register for the session offered in Gatineau. When he later asked to defer his training to a session offered in Vancouver at a later date (see the email in Exhibit 5, tab 21), she denied it. Her reasoning was that he had a history of putting off training, so she insisted that he complete the training as initially agreed.

229 Mr. Russell then emailed the grievor, declining to take the course, which was not mandatory (Exhibit 5, tab 21). He claimed that he was feeling pressured by her and that he felt that she was trying to drive him out of her team. After she received his email, she consulted Labour Relations on how best to respond as she did not want to make the situation worse. According to her evidence, she spoke to Labour Relations on October 28, 2013, following which she reviewed the intranet website on learning plans. Based on the information from both inquiries, she composed a letter to him in which she cited relevant policy and agreed that he could change his session and take the course in Vancouver.

230 The grievor testified that she contacted Labour Relations to get things right; she intended for everything to be transparent. Her conduct was not offensive. She merely put together a response based on the policy and approved his training request. She questioned how consulting Labour Relations and quoting from policy could be considered improper conduct.

231 She took 10 days to approve Mr. Russell's request, which in her opinion was a reasonable amount of time.

232 Mr. Russell asked her why she had consulted Labour Relations about him. According to her testimony, she advised him that she had done so because he had made some serious allegations, and she needed advice on how to deal with them (Exhibit 5, tab 21).

233 In the end, several days later and in a very lengthy letter drafted to be precise and technically correct, she advised him that he could take the course in Vancouver as he had requested.

234 The grievor testified that at the end of the harassment investigation, she had every expectation that she would be exonerated of any wrongdoing and that Mr. Russell would be found guilty of harassment and would be subject to disciplinary

action. She testified that she expected to continue in her manager role and that she would continue to deal with the performance issues in the Nanaimo office. She stated that she was "devastated and shocked" by the results. According to her, so was Mr. Goluza.

235 Throughout the investigation process, the grievor was concerned with how Mr. Russell would react when he found out that his complaint had no merit. She testified that she knew that the investigator that was hired was a former police officer but that she had no knowledge of environmental enforcement.

236 The grievor was concerned with the Investigator's lack of knowledge of the employer's policies and business. This was clear in the investigation report when she did not catch the difference between use-of-force training and the regional shotgun practice. When it came down to the quality of the report, the grievor stated that she was concerned that the Investigator had been "cutting and pasting" her conclusions and that she had not given proper consideration to the evidence.

237 As for the misconduct allegations, particularly the most serious ones, again, the grievor disagreed with most of the conclusions, which found her culpable. She testified that the conclusion that she was not truly afraid of Mr. Russell "was highly offensive and shocking". She had had a bumpy start managing him, and from his arrival in Nanaimo, he took an opposing view to her managerial decisions. He thought that the Nanaimo office should be an independent district, and he wanted notice of when the grievor was to come there.

238 In September 2011, when the grievor assumed her role, she established bilateral meetings with each of her employees. Just before her meeting with Mr. Russell on September 15, he had executed two search warrants related to the fishing lodge initiative he was spearheading. She described him as stressed that day; the clock was ticking on the evidence that had been seized, and lodge owners had made personal attacks against him in the press. The grievor referred him to the Employee Assistance Program.

239 The grievor assigned an officer to help Mr. Russell with his work in October of that year. She helped him draft applications for an extension of time on the search warrants. She also brought in assistance to help prepare the Crown brief, along with administrative support for him. In April 2012, the grievor nominated him for the Queen's Diamond Jubilee Medal in recognition of his work of the fishing lodge initiative.

240 On May 3, 2012, the grievor asked to meet with Mr. Russell in Nanaimo to go over his work on the Crown brief. When they met on May 8, she found him "drowning in evidence" and attempting to put together a chronology of it. She asked another officer to put together some research and draft the charges, which upset Mr. Russell; he did not like her intruding into his work. The stress created by the fishing lodge initiative was exacerbated by the stress created by the ongoing accommodations study, according to her.

241 In August of 2012, the grievor was copied on a message requesting media lines for the Chase River spill, which was the first she had heard of it. She emailed Messrs. Russell and Fraser and demanded a debrief on the spill the next day; she travelled to Nanaimo and met with them and Messrs. Brochez and Leeden.

242 According to her evidence, when the grievor arrived, Mr. Russell "was very stressed" and had many binders and documents with him. The purpose of the meeting was to clarify who had been on spill response the day of the Chase River spill and when and what their enforcement response would be. The response she received from Messrs. Russell and Fraser was that there had been no response and that they did not plan to respond. This upset her, and she let those assembled know that that was an inappropriate response to the situation.

243 After the meeting, Mr. Brochez and Mr. Leeden contacted the grievor, according to her evidence. They reported that Mr. Russell was livid, that he had used colourful language about her, and that he had stated that she had berated him in front of junior officers and had harassed him. Shortly after this meeting, Mr. Russell went on leave and stayed on it until March 2013.

244 The grievor emailed Mr. Russell and sent him a registered letter demanding the return of the enforcement files in his possession during his leave so that she could conclude the work. According to her, neither Mr. Fraser nor Mr. Brochez could write the Crown briefs required for these files, so she brought them to her office in Vancouver. While going through them, she came across an email from Mr. Russell to the Crown Prosecutor in which he mentioned that he recorded conversations. She asked Mr. Fraser and Mr. Brochez if either of them knew that it had been happening.

245 Mr. Fraser denied any knowledge of it. According to her evidence, Mr.

Brochez described to the grievor in great detail how Mr. Russell routinely taped conversations, which she reported to Mr. Goluza in December 2012. In her opinion, it was both unlawful and unethical. She directed all work on Mr. Russell's investigation files to stop, and the files were closed.

246 When Mr. Russell returned to work in March 2013, he was upset that his files had been closed because of his breaches of the *Canadian Charter of Rights and Freedoms*. According to the grievor's evidence, the meetings with him to discuss this were highly charged and were directed at her. From that point on, Mr. Russell was to provide weekly progress reports on his files.

247 On May 22, 2013, he asked for a meeting with Mr. Goluza and the grievor, at which they discussed a laundry list of complaints he had against her, including closing the files. When the topic of leave came up, he complained about what he described as the grievor's unethical and unconscionable behaviour in work planning, her conduct towards him in general, and her facial expressions when dealing with him. He told her and Mr. Goluza that he felt that he had "been raped by [her]".

248 Mr. Goluza's response was that Mr. Russell and the grievor needed more face-to-face meetings, to improve their relationship. According to her evidence, the May 22 meeting was a turning point in her relationship with Mr. Russell. Things continued to deteriorate between them until June 30, 2013. He escalated to anger at a two-hour meeting with her, called her by his ex-wife's name, and blamed her for the breakdown of his personal life.

249 On November 3, 2013, Mr. Russell again went on leave. He returned on March 4, 2014. He filed the harassment complaint against the grievor in January 2014.

250 By March 2014, the grievor knew that Mr. Russell had accused her of abusing her authority, belittling him, humiliating him, stripping him of his duties, and threatening him and his livelihood. In total, she was alleged to have humiliated him 56 times. He had described her behaviour as unethical and unconscionable.

251 In April 2014, the grievor and Mr. Russell were both to attend a three-day use-of-force training for the region at the Justice Institute. The first day dealt with critical incident stress, during which Mr. Russell took copious notes, according to the grievor. His body language during this session caused her concern. At the end of the first day, she asked the training coordinator to contact one of the grievor's friends to pick up her

daughter from daycare in the event that she were injured during the hands-on part of the training. She mentioned this to Mr. Goluza but denied mentioning Mr. Russell's name to either her friend or Mr. Goluza.

252 The next day, the grievor spoke to Mr. Goluza and Mr. Gillieron about Mr. Russell's demeanour. According to her, neither was concerned about his presence, but Mr. Goluza told her that if she were concerned, she should go home. Since this was mandatory training and female officers were under particular scrutiny to complete it, according to the grievor, she remained and was partnered with Mr. Goluza and officers other than Mr. Russell.

253 Mr. Leeden later brought to the grievor's attention Mr. Russell's behaviour when striking the training dummy. Mr. Leeden had also reported to her comments that Mr. Russell made to Darin Conroy, an enforcement officer from another district, at some undisclosed point to the effect that she was childish and unprofessional. Mr. Leeden also reported to the grievor that Mr. Russell had called her "Miss Piggy", a "f…ing bitch", "the devil", and numerous other distasteful names. Messrs. Brochez and Goluza confirmed that Mr. Russell had called her "the devil". According to the grievor, she had a "unique understanding of where [she] stood with [Mr. Russell]."

254 When the grievor went to the Nanaimo office during this period, she tried to go at times when she knew that Mr. Russell would not be there. According to her evidence, when she had to go there and knew that he was there, she would wear her bulletproof vest and duty belt with all her defensive tools. She carried a map showing the route to the hospital and the local RCMP detachment. As a matter of safety, she stayed in a hotel near that detachment. She had accepted that at some point, Mr. Russell would assault her. Whenever he was to be in the Vancouver office during the harassment investigation separation period, Mr. Goluza notified her and Mr. Leeden.

255 At some point in December 2014, Mr. Brochez contacted the grievor and told her that Mr. Russell had been rooting around in the ceiling of the Nanaimo office, looking for surveillance equipment. Since she was not sure if the ceiling tiles were stable, she contacted Bert Engelmann, a retired senior occupational health and safety advisor, who she had met when he was the employer's Pacific Region's occupational health and safety manager in February 2005. He suggested that she bring in building maintenance

to check on them. She let Mr. Krahn know about Mr. Russell's activities and that Maintenance would check the ceiling tiles.

256 In terms of the misconduct allegations specifically investigated by Ms. Meroni, the first was that the grievor had cancelled Mr. Russell's access to the Burrard Street office without authority. She testified that once she had received the notice on Friday, April 10, 2015, stating that the harassment report's results would be released on Monday, April 13 (see the letter in Exhibit 5, tab 36), she panicked. On the Sunday, she knew the threat-risk assessment had not been done, and fully expecting to be exonerated, she expected that Mr. Russell would react violently.

257 The grievor was concerned for the safety of pregnant officers whose cubicles were located outside her office. The grievor knew Linda Carrière, the building security officer, and she emailed her on April 12 with the request to cancel Mr. Russell's access to the Burrard Street offices; it never occurred to her to email Mr. Goluza. She testified that she did not use her operations manager email signature block to influence or deceive Ms. Carrière, who knew that the grievor was an operations manager.

258 In the grievor's assessment of the situation, this was not misconduct. She had a better situational awareness than Mr. Goluza did, and in her assessment, it was necessary based on the factors that existed at the time. She would do it again if she deemed it necessary. She indicated as much in her later email to Mr. Goluza (Exhibit 5, tab 37).

259 The grievor admitted that she used her PeopleSoft access to look at Mr. Russell's leave records even though at that time, she was not his manager. She had requested from the ATIP office the dates on which he had filed ATIP requests about her. She testified that she wanted the dates and times of the requests to verify against the leave records. She sent this information to Mr. Goluza. According to her, she knew that Mr. Russell was not to use government time and resources to further his pursuit of ATIP requests because she saw it in his performance review (Exhibit 5, tab 28) and because Mr. Goluza had told her so. She wanted proof that Mr. Russell was not following directions; she had access to his records in PeopleSoft to get it, so she used that access.

260 The grievor testified that she used her PeopleSoft access and that she checked Mr. Russell's leave records more than once, even though he no longer reported to her, since the employer had not removed her access to his records. She looked specifically at his status on the day on which Mr. Brochez had seen him in the office at

night. She reported her results to Mr. Goluza, who said nothing to her about what she had done. A Labour Relations representative had issues with her accessing Mr. Russell's PeopleSoft records, not Mr. Goluza.

261 In her testimony, the grievor maintained that accessing Mr. Russell's leave records had not been inappropriate and that she had not broken any rules. In response to questions from the Board, she admitted that she had received training on the proper use of PeopleSoft and that it was not to be accessed for other than legitimate business purposes.

262 The grievor testified on the third misconduct allegation, which was that she had discussed the harassment complaint with Mr. Fraser despite having been told that it was confidential and that she was not to. She strictly denied this allegation as well. According to her, her relationship with Mr. Fraser had started out well; they were once friends. Since he had been unsuccessful in the process for the operations manager position and she had been the successful candidate, their relationship became strained. The transition to a supervisory relationship had been difficult, and their relationship remained strained. At one point, he threatened to quit, but she and he were able to work through it.

263 In December 2012, according to her testimony, the grievor received a call from Mr. Fraser reporting that he was in the emergency room. This was one of several emergency room admissions for him. The situation worsened by 2013 due to several incidents in his personal life. When it came time to do his mid-year performance review, it was noted that he was not completing basic tasks. The grievor testified that she referred him to the Employee Assistance Program.

264 During 2013 and 2014, Mr. Fraser was often out of the workplace. He was on sick leave when Mr. Russell made comments about the Western Forest Products shooting, according to the grievor. In October 2014, the grievor was informed that Mr. Fraser was to return to the workplace. On October 30, 2014, she was advised that there would be no gradual return to work and no referral to Health Canada to determine his ability to perform his duties. Despite her efforts to obtain a full fitness-to-work evaluation for Mr. Fraser, she was advised that the employer agreed that a doctor's note from the same walk-in-clinic doctor that Mr. Russell had seen would be sufficient for Mr. Fraser to return (Exhibit 4, tab 52, attachment 36A).

265 The grievor testified that she was "profoundly disappointed" by Mr.

Goluza's stand on this matter. She was obliged to monitor Mr. Fraser closely, to ensure that he did not show up unannounced, and to verify the state of his health, according to Health Canada, but she questioned how she could manage it given the employer's decision, which she had to accept. According to her evidence, Mr. Engelmann told her to ask for a different labour relations officer if she did not like the advice she had been given, which she did, but she was unsuccessful.

266 The grievor met with Mr. Fraser between December 17 and 19, 2014. Among other things, they discussed the requirement for training, the control of employer assets, performance objectives, his return to work, and the building senior officer designation, which he insisted he regain. She advised him that he would not be the building senior officer; it had been reassigned to Mr. Brochez, and it was to stay with him. She advised Mr. Fraser that he needed to get back to his basic duties. She also advised him that she was now the custodian of all the employer's assets, including boats, guns, trailers, and trucks, which further upset him. That was the extent of the meeting. At no time did she tell him that she knew what he had said to the Harassment Investigator or mention the harassment complaint. This allegation was false as well, according to her.

267 From the grievor's perspective, Mr. Fraser had difficulty changing from being her buddy to being accountable to her for his actions. Her opinion was that had she been tougher on Mr. Fraser from the beginning, Mr. Russell would not have filed a harassment complaint against her. She wanted Mr. Fraser to go to Health Canada for an assessment but left it to Mr. Goluza to deal with because she was afraid that Mr. Fraser would also file a harassment complaint against her. Mr. Goluza sent Mr. Fraser to the same walk-in clinic doctor as Mr. Russell had seen, which in the grievor's opinion, was a missed opportunity and greatly disappointing.

268 The fourth allegation was that her out-of-office message had been disrespectful (Exhibit 5, tab 40). Between April 7 and 13, 2015, she had been out of the office and had had no one to appoint as acting in her stead. She testified that she was frustrated, defeated, and upset based on Mr. Gillieron's interactions with the branch, as it seemed that all sensitive matters went to him instead of being dealt with by branch management. Since it appeared to her that he was in charge of the branch, she put his name down as the person to contact. During that time, she checked her email, so nothing important was misdirected. She admitted in her testimony that that was not the way to deal with her frustrations. It had been wrong, immature, and ridiculous, but in her

words, she had been "at the end of [her] rope".

269 The grievor testified that she had exercised poor judgement in this matter and that it had been the wrong thing to do, although she disagreed that she did anything that compromised the branch or any of the ongoing investigations. There was no breach of confidentiality. The out-of-office message was not disrespectful of Mr. Goluza or the employer in any way.

270 The grievor also testified as to her version of the events at the regional management team meeting, at which she was alleged to have made comments about Mr. Goluza interfering in the ongoing workplace investigations. According to her, she talked about her workplace investigation during the round-table part of the meeting. She advised Ms. Portman that Mr. Conroy may be contacted, following which, according to the grievor, Mr. Goluza "shot [her] an angry look", to which she responded to him that "[he] may not want him interviewed …". The grievor testified that she regretted saying this and that she should not have raised Mr. Conroy's name at the meeting.

271 Initially, the grievor's evidence was that she apologized for this comment and that it was "completely offside but [she] had concerns with Mr. Goluza's role in the investigation." In her opinion, Mr. Goluza did not take workplace violence seriously. She did not state it but understood that those present could have drawn that conclusion from her comments.

272 Her evidence at a later point in her direct examination was that during a follow-up meeting with Mr. Goluza, she told him that she had not accused him of anything and that she should have apologized. According to her evidence, at no time did the grievor say that Mr. Goluza had attempted to influence an officer. What she had said was that she was alleging it as a rumour, which she clarified in an email (Exhibit 5, tab 50). According to her, her behaviour at the meeting had been intense and inappropriate, and she apologized for it at the hearing.

273 The fifth allegation of misconduct had to do with the grievor's failure to follow management's direction not to undertake a fact finding into a situation that arose in the Nanaimo office between Mr. Fraser and Mr. Russell in late January 2015. She admitted that on May 11, 2015, Mr. Goluza told her in an email (Exhibit 5, tab 42) that there was to be no fact finding, but she felt that given her recent experience with harassment complaints, she was very well versed in the matter, and she knew better. She testified that handling workplace conflict is a matter of due diligence and that she had

to deal with it.

274 The grievor admitted that she had been given a clear direction not to launch a fact finding until all matters related to the situation between her and Mr. Russell had been concluded. Despite this, she advised Mr. Goluza that she would proceed with her investigation without consulting Labour Relations and that she would meet with Messrs. Fraser and Brochez, which she did.

275 When she was done, the grievor emailed Mr. Goluza (Exhibit 5, tab 44), stating as follows: "I told him I would do it, then did it and told him I did it." She admitted that she had been insubordinate, and according to her testimony, she regretted it. She testified that she was not entitled to ignore a ranking officer's directions. She just did

not listen. In in the future, she would follow any order or direction. She had to hold herself accountable for her actions, as she caused the situation.

276 According to the grievor, the process followed in Ms. Meroni's misconduct investigation violated the rules of natural justice. According to her evidence, she saw the interview with Ms. Meroni as her opportunity to defend herself and her actions.

277 She was told of the misconduct investigation on May 11, 2015. The witnesses against her were interviewed between May 14 and 21, 2015, and on June 4, 2015, Ms. Meroni asked to interview her on June 10 (Exhibit 3, tab 43). It took place on August 10, 2015. By the time it occurred, Ms. Meroni had written a preliminary report, which according to the grievor, was never mentioned at her interview.

278 Once the interview was completed, Ms. Meroni finalized her report and submitted it. The grievor was not provided with any opportunity to comment on it before it was submitted; she received her copy on the day her employment was terminated. It took a grievance (Exhibit 6, tab 60) to find out the details of the allegations against her during the course of the investigation. During the investigation, additional allegations had been added.

279 The grievor's interview with Ms. Meroni took an hour. The grievor prepared speaking notes (Exhibit 3, tab 46), which she provided to Ms. Meroni on a USB key on August 11, 2015. Ms. Meroni acknowledged receiving them but had no further questions for the grievor (Exhibit 6, tab 66). The final report was dated August 14, 2014, and the meeting with Mr. Owen was on August 28, 2015.

280 In anticipation of her meeting with Mr. Owen, the grievor prepared a document for his review (Exhibit 6, tab 66). She presented it to him in electronic format at the meeting but provided him the password to it only at the conclusion of their meeting, via email. She said she did so because she wanted to explain her point of view to him first.

281 The meeting took place via teleconference. The grievor was given one hour to make her submission (Exhibit 6, tab 69). Mr. Owen was accompanied by Ms. Laframboise. The grievor testified that she went through the allegations that were determined founded in the harassment complaint report and pointed out to Mr. Owen where the investigator had deviated from the harassment policy. Throughout the one-hour presentation, Mr. Owen had no questions for her. At the end, the teleconference link went dead. There had been no discussion of her fear of Mr. Russell or any discussion that the discipline letters had already been drafted. Even after he received the password to the grievor's document, Mr. Owen had no questions for her.

282 The disciplinary meeting was scheduled for October 1, 2015. In advance, the grievor submitted five or six questions that she wanted answered. While initially scheduled to take place in Mr. Goluza's office, the location was changed to a conference room on a non-secure floor in the employer's Burrard Street location. This time, Mr. Owen was accompanied by the Human Resources Manager.

283 Mr. Owen started out by saying that he would answer questions after he read his decision letter. He read the termination letter and gave the grievor a copy. She testified that she asked about the results of the security investigations and that he would not answer her questions. He then gave her a copy of the misconduct report and informed her that the rest of the matters were no longer any of her concern. (She did receive a copy of Mr. Leek's report in January 2016.)

284 She was then informed that Security was waiting to escort her off the premises, and Mr. Leek entered the room. He told the grievor that she was to return all the employer's property within 24 hours, or he would report her to the Vancouver Police Department. She was then escorted to the fourth floor to collect her personal belongings from her office while the members of her team on that floor waited in the conference room there for her to be escorted from the building. She gave Mr. Leek the evidence keys, her identification and badge, and her tools. The next day, her husband returned the rest of the equipment and uniforms to the employer.

285 In summary, the grievor stated that she has taken accountability for what she is guilty of; the rest she is either not liable for or consisted of good-faith errors in judgement. Other managers were never disciplined for serious acts of misconduct to her knowledge, and she had been disciplined for acts that she did not commit.

C. The employer's rebuttal

286 Mr. Conroy was an enforcement officer on Ms. Portman's team during the period in question. He met Mr. Russell in 2006 and worked with him in Prince George. They were coworkers and friends. During 2013 and 2014, Mr. Conroy spoke to Mr. Russell approximately every month or at least every other month. He testified that he would call Mr. Russell and check in on him because he could see that things were weighing on him. They talked about his health, his home, and the dynamics in the branch and in the region.

287 According to Mr. Conroy, Mr. Russell expressed difficulties he was having with the grievor and stated that he felt that the team was turning against him. He felt that he was being isolated. Mr. Conroy testified that he did not see members of Mr. Russell's team associating with him when he saw Mr. Russell in person.

288 Mr. Conroy knew that Mr. Russell found a couple of things particularly difficult. He had been belittled in meetings in Vancouver and had been denied a request to buy a fridge for the Nanaimo office. However, once he filed his harassment complaint, Mr. Russell did not discuss particulars of it with Mr. Conroy. He told Mr. Conroy that there were strict rules governing what he could say or talk about with respect to the harassment complaint. After filing the complaint, Mr. Russell no longer talked to Mr. Conroy about the grievor. He said that if people knew what was going on, they would understand.

289 Mr. Conroy described the relationship between Mr. Russell and Mr. Fraser as strained from time to time. He also testified that he felt sorry for Mr. Brochez, who he felt was caught in the middle of the mess. When asked about Mr. Leeden, Mr. Conroy said that he did not have a lot of trust in Mr. Leeden because he took everything he heard directly back to the grievor in Vancouver. People were very cautious about what they said in front of Mr. Leeden.

290 Mr. Russell was recalled as a rebuttal witness. He testified that after the Shearwater incident, he very rarely worked with Mr. Leeden, and he had not discussed anything of consequence with him until 2017, when they discussed a pulp mill case. In

2016, Mr. Leeden and Mr. Brochez had asked him to discuss the Shearwater incident, but he did not see any reason to bring up something from 2011. In general, Mr. Russell has rarely been around Mr. Leeden but when he has been, he has been cordial.

291 Mr. Russell testified that he filed the harassment complaint in January 2014 while he was on his second sick leave. He worked on it at home, not in the office. He did not share the complaint with anyone except his personal harassment advisor and the harassment investigator. He took extreme care when he brought the documents into the office in January 2015 to prepare his response to the interim report.

292 Dr. Mulder, whom the grievor described as the walk-in clinic doctor, has been Mr. Russell's family physician since December 2012. In the beginning, he saw Dr. Mulder every two weeks. Then it was monthly. Dr. Mulder has completed the periodic health evaluations required for Mr. Russell to maintain his peace officer status. Dr. Mulder is not a walk-in clinic doctor; he is physician who sees patients in a walk-in clinic. No one else would have had better knowledge of Mr. Russell's state of health in 2013.

III. Summary of the evidence for the complaint

A. The grievor

293 The grievor filed a complaint against Mr. Russell alleging that she was afraid for her safety around him. She believed that he hated her and that the employer knew of it. Mr. Russell had been an unsuccessful candidate for the operations manager position, which she had won. According to her, he was reported to have referred to her regularly as an "f…ing bitch" or "a devil" and that he stated that she "should be burned at the stake". Ostensibly, she was the cause of everything wrong in his life, including his divorce. He apparently kept a private collection of photos of her spanning nine years. This upset her. She sought the protection of her employer and her union; neither took her seriously, according to her.

294 The grievor was concerned about how Mr. Russell would respond to the preliminary report about his harassment complaint. Other officers had described him as angry and unpredictable. On April 9, 2015, it was reported to the grievor that he was angry with her and that he had been heard to say that she would not get away with interfering in his career. Mr. Krahn is alleged to have emailed Mr. Goluza, the grievor's district manager, and the employer's Labour Relations office. Mr. Goluza was reported to have told the employer's security officer Mr. Leek that Mr. Russell had made an alarming threat against the grievor.

295 According to the grievor, other officers told Mr. Leek that they would not work with Mr. Russell because of his anger issues. Mr. Krahn refused to supervise Mr. Russell any longer after an outburst he made while they were discussing a request

the grievor had made to Mr. Krahn. The grievor claimed that she asked Mr. Krahn whether she was in any danger from Mr. Russell, and reportedly, she was told that she was in danger only if she was in close proximity to him.

296 After his investigation, Mr. Leek concluded that Mr. Russell's comments constituted an act of workplace violence under the *CLC*. Despite this, when the employer terminated the grievor's employment, it found that no act of workplace violence had occurred towards her and that her security had not been at risk.

297 On April 9, 2015, the grievor discovered that Mr. Russell had taken ATIP requests from Mr. Brochez' desk. When she found this out, she emailed Mr. Krahn, requesting that he ask Mr. Russell to return the requests. When Mr. Russell was told about the grievor's request, he lost his temper and yelled at Mr. Krahn that "… the f…ing bitch is not going to get away with this. F… you Peter; you are supposed to be protecting me." Mr. Krahn conveyed that to Mr. Goluza. Once Mr. Goluza found out about it, he called Mr. Russell, reminded him about the use of inappropriate language in the workplace, and referred him to the Employee Assistance Program.

298 On April 10, 2015, the grievor and Mr. Russell were given 48 hours' notice that the final report of the harassment investigation would be released on April 13. From April 9 to 13, Mr. Goluza had no communication with the grievor. When he arrived at work on April 13, he received an email from the departmental security office at regional headquarters (Exhibit 5, tab 37), confirming that Mr. Russell's access card had been deactivated at the grievor's request. This was the first time that Mr. Goluza became aware of her request to deny Mr. Russell access to regional headquarters. Mr. Goluza directed her to cease pursuing her request as Mr. Russell did not report to her, and she did not have the authority to revoke his access. Again, Mr. Goluza was embarrassed in front of staff by the grievor's actions.

299 On April 3, 2015, the grievor's legal counsel sent a letter to the employer concerning Mr. Russell and indicating that he posed an urgent threat to the grievor's safety. Her counsel raised what is described in the letter as an "urgent matter of workplace safety" (Exhibit 5, tab 33). The grievor testified that she feared that Mr. Russell would focus his anger at her as he believed that she was personally responsible for his

problems, he had expressed sympathy and empathy for the shooter at Western Forest Products, he was an avid hunter and gun enthusiast, he struggled with mental health issues that the employer had stymied her attempts to have treated, and he had filed a harassment claim against her, which was certain to be dismissed.

300 Mr. Russell testified in response to the statement in the letter that he focused his "considerable anger and disgruntlement at [the grievor] and that [he] hold[s] her responsible for all of [his] problems", by testifying that she was the cause of some of his problems but not all of them. The statement in the letter inferred that he had many problems, which he denied.

301 Mr. Russell did discuss the shooting incident with his colleagues because it was a significant news event in the community. He heard about it on his way to work the day it happened and was shocked by it. He spoke to his coworkers about it but never expressed any sympathy or empathy for the murderer. The grievor was not in the workplace during the discussions, which were nothing other than an attempt to understand an incident that had shocked the whole community. Mr. Russell agreed that he was an avid hunter; he hunts for food. He is not a gun enthusiast. The only firearms he owns are for hunting.

302 As for the comment that he struggled with mental health issues, Mr. Russell did not deny that he had been under a lot of pressure with the number of files he managed and how the grievor managed him from 2012 until they were separated in 2014. He had confided in her that he was not at the top of his game and that he was struggling with concentration. He asked her for her support when his wife left him. Mr. Russell testified that the grievor used her authority to belittle him and to threaten his livelihood, which was identified and corroborated in the harassment complaint.

303 Mr. Russell's attention was also drawn to Mr. Leek's results of his investigation into the grievor's allegations of misconduct and workplace violence. In particular, he was referred to an incident on April 9, 2015, when during his weekly call with Mr. Krahn, they discussed that the grievor had contacted Mr. Krahn because Mr. Russell had removed files from Mr. Brochez' desk without authorization. The grievor had insisted to Mr. Krahn that the files, which had Mr. Russell's name on them, were to be returned immediately. Mr. Russell was reported to have said to Mr. Krahn as follows: "[that] f…ing bitch is not going to get away with this… You [Mr. Krahn] are supposed to be protecting me" (Exhibit 6, tab 53, paragraph 17). Mr. Russell described

the documents as being Protected B and as bearing his name. Documents classified Protected B are to be secured.

304 Mr. Russell denied making the statement attributed to him. He admitted that he might have said that he "did not care what [the grievor] f… ing wanted" and that he told Mr. Krahn that he "was supposed to be f… ing protecting [him]". Paragraph 17 of Mr. Leek's report is inaccurate. He testified that Mr. Krahn had berated him on the phone after he received the email from the grievor demanding the return of the documents in question. While Mr. Russell tried to remain calm, according to his evidence, Mr. Krahn escalated the tone of the call. When his attempts to explain to Mr. Krahn what had happened were unsuccessful, Mr. Russell admitted that he told Mr. Krahn as follows: "Quit f…ing yelling at me. I don't care what she f…ing wants. You need to start f…ing protecting me." Mr. Krahn calmed down after this, and Mr. Russell was able to discuss the documents in question. He agreed to return them.

305 Mr. Goluza was aware that Mr. Russell had made comments about a workplace shooting in Nanaimo and about his discussion with Mr. Krahn. Mr. Goluza was also aware that Mr. Russell was a hunter. Mr. Goluza testified that he did not agree that Mr. Russell was a gun enthusiast as he was not a gun collector. Mr. Russell was treated for mental health issues while on leave in 2012 and 2013, according to information that Mr. Goluza had received from Mr. Krahn.

306 The threat-risk assessment that the grievor referred to at the May 11, 2015, management meeting was completed. Mr. Goluza received the report in October 2015. The Investigator had concluded that based on the events of April 9 and on the contents of a letter from the grievor's legal counsel (Exhibit 5, tab 33), Mr. Russell had committed an act of workplace violence. Mr. Goluza testified that in response to this conclusion, Mr. Russell was given a letter outlining the employer's expectations of his behaviour.

307 The grievor told Mr. Goluza that she was concerned about how Mr. Russell felt about her. His dislike of her made it difficult to manage him. When he returned to work in 2013, Mr. Goluza told her that the file had been closed on any issues she might have had with him. According to Mr. Goluza, Mr. Russell did not like the way she treated him, which was like a child. When talking about her, he did refer to her as the devil. The problem between him and her started in 2013 when she embarrassed him by closing many of his files without consulting him because of breaches of the *Canadian Charter*

of Rights and Freedoms.

308 Mr. Fraser dismissed the grievor's comment that Mr. Russell was an avid hunter and gun enthusiast. He admitted that Mr. Russell was a hunter and that he possessed firearms for that purpose. He dismissed the gun enthusiast comment. According to Mr. Fraser, Mr. Russell did not participate in any gun-related activities or associations.

309 Mr. Fraser's recollection of dates was uncertain in cross-examination. Mr. Leek had interviewed him as part of the threat-risk assessment. He told Mr. Leek that he was not in the workplace when the shooting occurred at the mill in Nanaimo. He had been in a motor vehicle accident and had been hospitalized on the day of the shootings. Despite that he might have been mistaken about when the discussions occurred about the mill shootings, Mr. Fraser was certain about being present when they occurred and about the content of Mr. Russell's comments.

310 According to Mr. Fraser, the shootings were not a regular topic of discussion in the Nanaimo office. Some discussions occurred as the shooter's ongoing trial was reported in the press. Mr. Russell took particular interest in the trial since he had worked in sawmills before working for the employer. He did not try to justify the shooter's actions.

311 Mr. Fraser testified that he had heard Mr. Russell say negative things about the grievor but that he had never heard him call her a "f…ing bitch" or "the devil". At no point did he ever hear Mr. Russell comment that the grievor should be burned at the stake, as alleged. Mr. Fraser has seen Mr. Russell escalate to anger over his situation out of frustration with the grievor's ongoing persecution of him.

312 Ms. Graca testified that the grievor discussed her concerns about Mr. Russell's presence in the Vancouver office at a regional management team meeting in May 2015. To those in attendance, the two other operations managers, Mr. Goluza, and the security intelligence officer, the grievor advised that she was concerned with the idea of Mr. Russell being on the same floor where she worked and that she had filed a police report because of her fear of violence from him based on their general interactions and not one particular incident.

313 Ms. Meroni commenced her investigation in May 2015 but was aware as early as April 8, 2015, of the grievor's conduct, which was the impetus for the

investigation. She was also aware at the time that the grievor's legal counsel had sent a letter to the employer expressing concern for her workplace safety.

314 Ms. Meroni testified that she was unaware that Mr. Russell hated the grievor and that he would refer to her as a "f…ing bitch". She was also unaware that he had a volatile temper and that he became enraged when speaking about the grievor. Ms. Meroni was aware that the grievor had told Mr. Goluza that she was afraid of Mr. Russell.

315 Mr. Owen testified that the grievor exercised none of her rights under the *CLC* or otherwise. Regardless of how many copies of the threat-risk assessment existed, he testified that they did not change his views. According to him, even if the grievor had a true fear for her safety as indicated in the threat-risk assessment, he still wondered why she continued to deliberately poke at Mr. Russell.

316 Mr. Owen conceded that in emails (Exhibit 3, tabs 40 and 46), in the notes of the grievor's interview during the threat-risk assessment (Exhibit 3, tab 38), and in that assessment, there is evidence that she had expressed concerns for her safety. He was also aware that she filed a police report on March 24, 2015, about those concerns as well as the letter from her counsel dated April 3, 2015 (Exhibit 3, tab 16). His belief and testimony were that it was all a smokescreen that she had created to establish that Mr. Russell was a much bigger problem than he actually was, to discredit him in the course of the harassment complaint process.

317 In May 2015, Ms. Meroni conducted an investigation into the grievor's behaviours and actions since April 2015. She had decided in early April that the investigation was warranted. It was in no way linked to the letter from the grievor's counsel. The concerns arose in early April when the grievor admitted to accessing Mr. Russell's leave records and cancelled his access to the Burrard Street office. There is no link between her investigation and the letter from the grievor's counsel.

318 Mr. Brochez testified that over time, Mr. Russell became more and more agitated at work; he took three separate leaves of absence in three years. According to Mr. Brochez, Mr. Russell lived in a world of paranoia. During the worst of this period, Mr. Brochez quoted Mr. Russell as having called the grievor a bitch, a c…, Miss Piggy, and the devil. In Mr. Brochez' opinion, it did not help the situation that the grievor was a woman since Mr. Russell was known to make derogatory comments about women. Being held accountable by a woman was a nightmare for Mr. Russell, in

Mr. Brochez' opinion.

319 When asked about the comments that Mr. Russell allegedly made concerning the Western Forest Products shooting, Mr. Brochez testified that they discussed the situation as a group and that Mr. Russell said that he could understand why it could have happened. The shooter must have been having marital problems or must have been under a lot of stress.

320 In Mr. Brochez' opinion, that was not an unusual thing to say except that given Mr. Russell's state of mind, Mr. Brochez thought that the grievor should know that he had made the comment. However, he did not think that Mr. Russell would do anything violent; he was concerned that Mr. Russell might have a heart attack or harm himself. When he told the grievor about the conversation, according to his evidence, Mr. Brochez told her that Mr. Russell was trying to reason why things like this happen.

321 By March 2015, Mr. Brochez felt it necessary to document his interactions with Mr. Russell, which he would then report to the grievor. According to Mr. Brochez, Mr. Russell would spend two to three hours daily ranting about how she and the department were ruining his life and career. He would get red-faced, pace, laugh, cry, and then return to normal all within the span of a few minutes until the next thing set him off. Mr. Brochez described himself as Mr. Russell's sounding board. According to his evidence, Mr. Brochez reported this to the grievor because the impact of it meant that he was not working for two to four hours per day.

322 Mr. Brochez returned to the Nanaimo office at some point in March 2015 to retrieve documents but discovered that Mr. Russell had packaged them up and sent them to the regional office instead of letting Mr. Brochez know that he had them.

323 Around the same time, Mr. Brochez returned to the Nanaimo office to use the gym after hours. When he arrived, he saw lights on in the office and Mr. Russell surrounded by bankers' boxes. He found this odd, so he reported it to the grievor; the ongoing harassment investigation and the circumstances between Mr. Russell and the grievor was having an impact on Mr. Brochez's productivity.

324 Mr. Brochez testified that Mr. Leek had interviewed him as part of the workplace violence investigation. He told Mr. Leek that he had no concerns that Mr. Russell would ever direct violence towards the grievor or him. Mr. Russell's energy was directed at venting. Mr. Brochez' biggest fear was being caught between the grievor

and Mr. Russell. At no time had Mr. Russell indicated to Mr. Brochez that he would harm or threaten to harm the grievor. He would have tied her up with harassment or other complaints; he was not violent.

325 Mr. Leeden described Mr. Russell as being "all over the place". According to Mr. Leeden, he never knew what Mr. Russell was going to do or say. He described Mr. Russell as "completely paranoid"; he wondered why Mr. Leeden was there and recorded everything that happened. Mr. Leeden reported that Mr. Russell went through a range of emotions and was always on edge. Mr. Leeden stated that he "did not know what would set [Mr. Russell] off." If the grievor's name came up, Mr. Russell would get angry. Mr. Leeden testified that he made a concerted effort to avoid Mr. Russell.

326 Mr. Leeden described the day of the Western Forest Product shooting conversation. It was a general discussion in the Nanaimo office in which Mr. Russell tried to explain that he could see how things at home might have caused the shooter to do what he did. Mr. Leeden testified that he reported this comment to the grievor because many of Mr. Russell's behaviours, in Mr. Leeden's opinion, "were not a normal train of thought." Mr. Leeden testified that he never felt threatened by Mr. Russell physically but that in certain circumstances, for example if they were drinking together, he would not be surprised if they got into a fight. The grievor was aware of this.

327 Mr. Leeden reported Mr. Russell's bad behaviour to the grievor at every opportunity but mostly reported him questioning her motives. He did tell her that Mr. Russell was fixated on her, that he had decided that she had wronged him, and that this had become all-consuming for him. According to Mr. Leeden, Mr. Russell focused all his energy on the harassment process. Mr. Leeden stated that he was "scared of retribution", as Mr. Russell considered that people were either with him or against him, and Mr. Leeden expected that this retribution would be in the form of a harassment complaint against him.

328 In Mr. Leeden's evaluation, the grievor's fear of Mr. Russell was real. When he considered how quickly Mr. Russell became angry and the way he spoke of her, Mr. Leeden considered her fear warranted. He told the Harassment Investigator that he saw fear in the grievor's face. In his opinion, Mr. Russell was unpredictable and had mood swings. Mr. Leeden testified that he was concerned for Mr. Russell's health because he was so wound up; he thought that Mr. Russell would snap because of the stress he was under.

329 In cross-examination, Mr. Leeden did not recall if Mr. Leek asked him about Mr. Russell calling the grievor names; yet, he did recall telling him that Mr. Russell did so, calling her horrendous names. At one point in his cross-examination, Mr. Leeden admitted that he told Mr. Leek that he had never actually heard Mr. Russell call the grievor any of these names. Later, in his cross-examination, he insisted that he had actually heard Mr. Russell use them.

330 Mr. Engelmann also testified on the grievor's behalf. The grievor had contacted him several times between 2013 and 2015, once about Mr. Russell removing ceiling tiles in the Nanaimo office to look for surveillance equipment that he thought had been installed. Mr. Engelmann advised her to contact building maintenance to investigate for rodent infestations and while they were there, they could check whether Mr. Russell had placed surveillance equipment in the spaces above the tiles.

331 The grievor also contacted Mr. Engelmann about Mr. Fraser and was provided guidance and advice about his behaviour, sick leave, and a motor vehicle accident he had been involved in. Mr. Engelmann told her that she needed a fitness-to-work evaluation conducted on Mr. Fraser before he would be allowed to return to his duties and that she should contact the Office of Conflict Management to deal with the personal issues in the Nanaimo office.

332 In December 2014, at a meeting with Mr. Guilliéron, Mr. Goluza accepted the assessment by Mr. Fraser's general practitioner of Mr. Fraser's suitability to return to work, contrary to the advice that Mr. Engelmann had given to the grievor that general practitioners are not qualified to conduct an assessment of a patient's mental health and that a referral to Health Canada is required.

333 The grievor was not happy with this outcome. Mr. Fraser was reinstated without her input and over her objection. According to Mr. Engelmann, she was concerned that once Mr. Fraser was reinstated to full peace officer status, she would no longer be able

to fully monitor him, and Mr. Goluza did not support her in this respect. Mr. Goluza told her that she was to use discipline and performance management to deal with the issues in the Nanaimo office. On cross-examination, Mr. Engelmann was referred to Exhibit 45, in which it is clearly indicated that in the employer's policy, an employee's treating medical practitioner is the primary source of the information that the grievor was seeking related to Mr. Fraser.

334 Mr. Engelmann testified that he saw and was aware of no indications of violence from Mr. Russell in 2015. He had very little communication with the grievor after the meeting with Mr. Goluza concerning Mr. Fraser. She had contacted him about cutting off Mr. Russell's access to the Burrard Street offices, and he advised her to contact the employer's security representative.

335 The grievor asked Mr. Engelmann if it was possible to change labour relations advisors because in her opinion, the one assigned did not understand the occupational health and safety aspects of her concerns with her team. Mr. Engelmann did not know whether she ever made such a request.

336 Mr. Leek was Manager of Regional Security, Prairie and Northern Region, and Regional Firearms Officer when his acting director asked him to undertake an investigation in the employer's Pacific and Yukon Region. The terms of reference for that investigation required him to determine if Mr. Russell had committed violence in the workplace under the definition in the "Workplace Violence Directive", to determine if the grievor's fear for her safety was justified and to determine whether the employer had done everything reasonable to address it. The terms of reference were submitted as Exhibit 3, tab 39, page 13.

337 His conclusion was that Mr. Russell had in fact committed workplace violence when he yelled at Mr. Krahn, but that the grievor was in no danger unless she interacted directly with Mr. Russell and in Mr. Leek's words, "pushed his buttons to get him angry, he may lash out". He did use the example of her being alone in a room with Mr. Russell and upsetting him as a possible situation in which she could be in danger.

338 Mr. Leek testified that he concluded that the grievor had no reason to fear for her safety and that therefore, the second question of the terms of reference was unfounded. Her fear might have been real to her but from an objective analysis, it was

not founded. Mr. Leek testified that whether Mr. Russell was a threat and whether the grievor feared him were two separate issues. The terms of reference were to determine if her fears were founded, not to determine if she was fearful; nor was it his mandate to determine if her complaint was vexatious. Mr. Leek took what the grievor said at face value and assessed it based on his experience.

339 According to Mr. Leek, quoting Mr. Leeden, there was disharmony in the Nanaimo office. Those working in that office described problematic behaviour and

possibly a poisonous work environment, but no one ever mentioned that Mr. Russell was a physical threat to the grievor or anyone else, even if he had anger issues. The employer took steps to separate the parties, even though a physical distance already existed. Mr. Leek found nothing to support the grievor's beliefs that Mr. Russell would harm her or her child; therefore, he concluded that the employer could do nothing more.

340 In the course of his interviews, Mr. Leek testified that he told Mr. Engelmann that he thought some of the grievor's fears were unreasonable. When he interviewed Mr. Goluza, he told him that he thought that her beliefs were sincere before he met with her. Then Mr. Leek concluded that the grievor had provoked Mr. Russell and that she had goaded him into retaliation by leaking the ATIP requests to Mr. Brochez.

341 According to Mr. Leek, Mr. Krahn, who assumed responsibility for supervising Mr. Russell, had expressed concerns to Mr. Leek about the grievor's management style and its impact on the workplace. Mr. Leek testified that Mr. Krahn told him that the grievor was not a suitable manager for Mr. Russell because of that style. He went on to state that Mr. Russell and the grievor fed off each other and that she provoked Mr. Russell. Each time she did so, his escalation to anger became quicker and quicker. Mr. Leek did not recall anyone saying that the grievor would escalate to anger.

342 Mr. Leek testified that at the grievor's request, he measured her office to determine if it was possible to add another exit. He also spoke to her about Mr. Russell's access to the Burrard Street offices and to the employer's premises in general. According to Mr. Leek, the grievor tried to convince him that general access to the employer's buildings by employees who do not work in a given building should be prohibited.

343 Mr. Leek's recommendations on mental health training for the grievor and her team were related to workplace stress and to general knowledge of workplace violence and not because of any concerns he had about Mr. Russell.

344 The grievor testified that in January 2015, she sent an encrypted email to Mr. Brochez, who went into the office to access it. He found Mr. Russell in the office, after hours, in his words "surrounded by banker's boxes", which the grievor informed Mr. Goluza of. It happened at the end of January, just as the deadline to submit the response to the Harassment Investigator was approaching. The grievor expressed her

concerns for her safety in an email to Mr. Goluza and Mr. Gillieron due to the state of Mr. Russell's mental health and asked for an update on the progress of the harassment complaint process (Exhibit 3, tab 4, attachment 53).

345 The grievor testified that she honestly believed that she would be exonerated and that once the report was released and Mr. Russell saw that she had been exonerated, he would react in the extreme. The employer's response to her concerns was in her words "deafening". She checked her perceptions against several Internet websites and spoke to a critical-incident stress expert from the Justice Institute of British Columbia. At the expert's suggestion, she spoke to the police about the situation on March 24, 2015. The police did nothing since Mr. Russell was not following her and had not threatened her directly. The stress of the situation caused her chest pains, and she went to a hospital to have them looked at.

346 In April 2015, the grievor had her legal counsel send a letter to the employer demanding that it address the unsafe workplace situation. Ms. Meroni's misconduct investigation was initiated in early May 2015, shortly after the employer received the letter. It was not merely coincidental that disciplinary actions against the grievor were considered after the letter was received, according to her evidence.

347 Mr. Owen testified that the two were completely unrelated. The misconduct investigation was triggered by the grievor's behaviour; her fears did not enter into the assessment, although Ms. Meroni was aware of them by the time she launched her investigation. The grievor might have sent emails out of concern for her safety, but they did not negate her misconduct, according to Ms. Meroni. The employer had put in place sufficient steps to mitigate any risk that Mr. Russell might have imposed. The parties were separated, and it was highly unlikely that Mr. Russell would appear in the Vancouver officer unannounced, since he required his manager's approval to travel from Nanaimo to Vancouver on business.

348 In the grievor's opinion, it was only a matter of time before Mr. Russell would assault her, which would give the department a black eye (Exhibit 9). She made it clear that she would no longer be his target (Exhibit 5, tab 28), but Mr. Goluza insisted that she was to manage him, up to the point that they were separated.

349 In cross-examination, the grievor's evidence was that Mr. Russell had a history of alleging that she had harassed him. August 14, 2012, was the first time she consulted Labour Relations about him; he had made informal allegations that she was

harassing him during a meeting on August 13. He had told her that he felt harassed by her; she did not agree. Their next meeting was upon his return from sick leave in March 2013 (Exhibit 4, tab 52, Appendix 26). This meeting was a rehash of the August 2012 meeting, according to the grievor. She told him that she would consult Labour Relations again. She described him as being "all over the place" and "blaming [her] for so much".

350 On April 29, 2013, they met again to discuss the use-of-force training and shotgun practice. The grievor described herself as calm throughout the meeting; she was not fearful. Mr. Russell apologized for his behaviour at a March 18 meeting. When directed to a summary of the March meeting (Exhibit 4, tab 52, Appendix 29), she confirmed that she had not noted anywhere that she was fearful of Mr. Russell at that meeting.

351 According to the grievor, Mr. Russell became angry when she raised the issue of him using the employer's assets for his own use and told him that doing so was contrary to policy (Exhibit 5, tab 12). She testified that she had particular concerns about the content of his "McNeil disclosure" (a statement of peace officer misconduct, which might compromise him as a witness) to the Crown because she did not know what he had disclosed. She was given an envelope to deliver to the Crown prosecutor, but she was not privy to its contents. She also felt the need to review the employer's values and ethics code with Mr. Russell (Exhibit 4, tab 52, Appendix 30). Still she was not fearful of him.

352 The grievor's fear of Mr. Russell crystallized at the personal defence training in April 2014. At the end of the first day, while she was waiting in the training facility lobby for the parking lot to clear, the grievor had a conversation with the employer's training and learning coordinator. According to her evidence, the grievor asked the Coordinator to contact a specific friend of the grievor's to pick up her daughter in the event that she should be hurt during training. The Coordinator reported this conversation to Mr. Goluza, who then consulted Labour Relations.

353 On April 3, 2015, through her lawyer, the grievor demanded that a threat-risk assessment be initiated of Mr. Russell by a psychiatrist (Exhibit 5, tab 33, page 2). She had been preoccupied with having him assessed by Health Canada and with having a proper fitness-to-work evaluation done (Exhibit 6, tab 70, page 12). If it had happened when she first raised it, none of the rest of it would have happened, according to her. When Mr. Russell returned to work the second time, after he had filed his harassment complaint, he no longer reported to her.

354 According to the grievor, Mr. Goluza was to advise her when Mr. Russell was to be in the Vancouver office so that she could work from home that day. There was never any discussion of a permanent switch to Mr. Krahn's team; the assumption was always that Mr. Russell would return to her team and that she would have to find a solution to work with him. According to her testimony, Mr. Goluza believed that she was fearful of Mr. Russell. Labour Relations and senior management thought she was lying. Mr. Leek believed her as well, even though he concluded that Mr. Russell posed no threat (Exhibit 6, tab 61).

355 According to the grievor's evidence, Mr. Russell had issues with women and did not like being managed by one. The source of his hatred of her was that she shut down his files because of his illegal recording activities. Also according to her, he made numerous ethical errors in the sports fishing lodges initiative. He passed on information gained through these violations to lay charges. He violated the employer's values and ethics code, and she had to deal with him.

356 The grievor was concerned over what Mr. Russell was doing with information he had about her and photos he had of her, so she filed more than 114 ATIP requests to obtain this information, including web browser information.

357 In cross-examination, the grievor testified that she tried everything possible to protect herself, with no assistance from the employer. She took matters into her own hands and cut off Mr. Russell's access to the Burrard Street offices. She had asked Mr. Leek to consider it when he interviewed her. She testified that she told him that she assumed that he was conducting his investigation because she had contacted Ms. Carrière.

358 The grievor claimed that she had better "situation awareness" than Mr. Goluza because he was not in the office. Therefore, she was better able to determine whether a threat existed.

B. <u>Remedy</u>

359 When Mr. Russell found out that the grievor had been discharged from her employment, he stated that he found it "anticlimactic". He thought that she would be moved elsewhere but did not expect that she would be terminated. He testified that he felt for her situation but that if she were reinstated, it would affect him significantly by negatively impacting both his health and his career. Reinstating her to her managerial position would have a tremendous negative impact on the team as a whole, according to

Mr. Russell. The team members had undergone mediation as a group and under new management were again reaching their stride. Reinstating the grievor would collapse this positive momentum.

360 Mr. Goluza testified that if the decision were made to reinstate the grievor, he would accept it but would leave the employer even though in the beginning and for many years, he had a good working relationship with her. She was open, respectful, and independent, and she could be strategic but was mostly reactive. She was very reluctant to have others comment on her plans. Her performance reviews were generally positive, but areas for improvement were noted. She would withhold information about the operations and labour relations issues in her district. Mr. Goluza described her as "a woman who did what she wanted, consequences be damned".

361 If the grievor were reinstated, Mr. Fraser testified that he would quit. He suffered from terminal health issues (he died before the hearing ended). He testified that in time, he would have to leave his job, but if he were subjected to continued supervision by the grievor, he would leave early. He testified that he was not prepared to live through her management again. Likewise, Ms. Portman and Ms. Graca were not willing to entertain renewing a working relationship with the grievor.

362 According to Ms. Meroni, the impact on the workplace would be extremely detrimental, demoralizing, and destabilizing if the grievor were reinstated, and the employer's integrity would be called into question. The toxic environment she created has been repaired, and reinstating her would undo all the efforts and would have a severe operational impact.

363 When asked if he would have concerns if the grievor were reinstated, Mr. Brochez responded that he could understand why others might even if he would not. He described her as a goal-oriented, demanding person who is intolerant of anyone who does not have the answer she seeks. The other former employees who testified about their relationships with the grievor echoed Mr. Brochez' comments.

364 The grievor testified that way she was terminated was "extremely traumatic" and that the way she was handled was "shocking". She has still not told her mother that any of this has happened. Despite having applied for a number of jobs, she had not been successful at the time of the hearing in securing alternate employment. She has not even been interviewed. She did not qualify for employment insurance because she was terminated for cause. She could not be employed as part of the Mount

Poley investigation with other agencies unless she gave up her grievance against the employer. At the time of the hearing, she was acting on occasion as a process server.

365 The grievor testified that she went from a valued employee with 22 years of service with the employer to nothing. She wants to be reinstated to her position so that she can complete the 10 years and 11 months she needs for retirement. While she once was a dedicated public servant, she testified that she is "now nothing". She no longer puts on her uniform every day; she stated that before, she went out and "protected the environment and made it safe for everyone".

366 The grievor assured the Board that she could return to a functional working relationship with Mr. Goluza. She testified that she still has personal safety concerns with Mr. Russell but that she is willing to work with the employer to address them. She sees no reason she should have to give up her career because she expressed her fears of Mr. Russell.

367 The grievor testified that initially, she had close personal relationships with Ms. Graca and Ms. Portman that lasted until Mr. Goluza divided the teams in three. Their relationships were good where they had common enforcement priorities and projects.

368 Her relationship with Ms. Portman had not otherwise been close, and the grievor found working with her difficult, as can be seen in emails (Exhibits 24 and 29). She did not appreciate it when Ms. Portman took their disagreement to Mr. Goluza, which was over what their officers would wear when serving warrants. She admitted to telling Ms. Portman to stop emailing her and to putting her on email mute (although she said that she never actually implemented such a rule). She also considered sending some of her daughter's Barbie outfits to Ms. Portman to consider as possible outfits for serving warrants. In the end, she apologized for her actions, which she testified to (Exhibit 26). The email exchanges indicate the level of frustration over Ms. Portman's failure to take the initiative to lead her team.

IV. Summary of the arguments for the grievance

A. For the employer

369 The grievor was terminated for misconduct following harassment and misconduct investigations. The harassment investigation found that she had harassed a subordinate employee by acting in a manner that she knew or ought to have known

would cause offence or harm. The Investigator found a pattern of conduct that had long-lasting impacts on the employee.

370 The subsequent misconduct investigation demonstrated that the grievor continued to act inappropriately toward Mr. Russell and to her managers during the course of the harassment complaint process. She was insubordinate and disrespectful, and she took reprisals against Mr. Russell.

371 Her actions were not excused by her fear of Mr. Russell. A separate workplace violence investigation determined that there was no risk to her personal safety.

372 Management terminated the grievor because of her misconduct. Up to and including the start of the hearing, she claimed that her actions had been justified and appropriate. When the hearing ended, she offered a limited and qualified apology for some of them. However, she continued to demonstrate a profound lack of insight into the significance of her actions and their effect on others. The bond of trust has been irreparably broken, and she has demonstrated that she is not suited to a managerial position. The decision to terminate her was reasonable and ought not to be interfered with.

373 The grievor was an operations manager with the employer's Environmental Enforcement Directorate. She supervised a team of enforcement officers located in Nanaimo and Vancouver (Exhibit 5, tab 1). As such, she and her employees held peace officer status.

374 In January 2014, Mr. Russell, an enforcement officer who reported to the grievor, filed a complaint alleging that she had harassed him (Exhibit 5, tab 22). She was made aware of the allegations (Exhibit 5, tab 23). In July 2014, the employer engaged an external harassment investigator to investigate the allegations. In December 2014, the Investigator provided the parties with a preliminary report into the allegations (Exhibit 5, tab 26). Subsequently, a dispute arose between the grievor and the Departmental Harassment Coordinator over access to Mr. Russell's comments on the preliminary report. The grievor filed a grievance against the Coordinator's decision not to release the information (Exhibit 5, tab 30).

375 On April 2, 2015, the grievor was notified that the final report was with the Chief Enforcement Officer, Mr. Owen, as the delegated manager pursuant to the

"Harassment Policy", for review (Exhibit 5, tab 29). On April 3, 2015, the grievor's legal counsel wrote to the employer, alleging that Mr. Russell presented a risk to the grievor's safety and demanding that a workplace violence investigation be conducted pursuant to Part XX of the *Canada Occupational Health and Safety Regulations* (SOR/86-304). The letter goes on to suggest that Mr. Russell undergo a psychological assessment and that if such a risk was founded, he be removed from the workplace and placed under surveillance (Exhibit 5, tab 33, page 2).

376 On April 11, 2015, the grievor was notified that the harassment report would be released the following Monday, April 13. It was released on that day. The Investigator deemed that four harassment allegations were founded, and the delegated manager, Mr. Owen, accepted those findings. The founded allegations were as follows:

> i) The grievor used disparaging language to suggest that Mr. Russell had obtained his deployment through preferential treatment or less-than-transparent means; that is, through "the old boys' club".
>
> ii) She excluded Mr. Russell from a team shotgun practice without a valid reason, based either on her unwillingness to accept a fitness-to-work certificate from his treating physician or on her personal fear of him, as expressed to Messrs. Leeden and Brochez.
>
> iii) She changed a swift-water rescue training course for Mr. Russell without advising him, ostensibly based on an arbitrary work deadline she had also not advised him of.
>
> iv) She initially refused to allow Mr. Russell to change the timing and location of a training course, responding to his request in a bellicose manner, and after consulting Labour Relations, she allowed him to change the course location but responded in an unnecessarily convoluted manner.

377 The Investigator further found that the grievor had acted improperly when she made up safety concerns about Mr. Russell to another employee, the employer's training and learning coordinator, during a team training session. The Investigator viewed the effect of a manager expressing safety concerns to a non-managerial employee as the most serious violation uncovered during her investigation but that it was out of scope of the mandate. Furthermore, Mr. Russell was not aware that this incident had

occurred (Exhibit 2, tab 9, page 3).

378 After the harassment investigation report was released and it received the letter from the grievor's counsel, the employer initiated a workplace violence investigation on April 23, 2015, to determine if the grievor's concerns about her personal safety with respect to Mr. Russell were founded. The terms of reference identified Mr. Leek as a "competent person" under Part XX of the *Canada Occupational Health and Safety Regulations*.

379 Following the grievor's behaviour at the regional management team meeting on May 11, 2015, when she alleged that Mr. Goluza had interfered with the workplace violence investigation, and based on the employer's concerns that she had acted inappropriately towards Mr. Russell and management on an ongoing basis, management initiated a fact-finding investigation on May 11, 2015. The employer assigned Ms. Meroni to investigate the allegations of wrongdoing.

380 On August 14, 2015, after reviewing the information, including the grievor's response to the allegations of misconduct against her, Ms. Meroni, Director General of Environmental Enforcement at that time, determined that the allegations were founded, in the following respects:

- The grievor had interfered with a witness to the harassment investigation by suggesting that she was aware of his testimony and was displeased with it.

- She had inappropriately used PeopleSoft to look at Mr. Russell's leave transactions at a time when he did not report to her and when the two had been administratively separated as a result of the harassment investigation.

- She had abused her position and had inappropriately interfered by removing Mr. Russell's access to the employer's Burrard Street offices in anticipation of the harassment investigation report being released.

- She had responded disrespectfully when Mr. Goluza, her director, had admonished her for interfering with Mr. Russell's building access.

- She had listed an advisor from Labour Relations as her out-of-office contact in a disrespectful and unprofessional manner.

- She had made false allegations in the presence of other management team members that Mr. Goluza had inappropriately interfered with the then-ongoing workplace violence investigation.

- She had been insubordinate by initiating a fact-finding investigation into a conflict between Mr. Russell and another employee in the Nanaimo office despite both her separation arrangement with Mr. Russell and Mr. Goluza's specific directions not to undertake one.

381 On September 3, 2015, Mr. Leek completed the workplace violence investigation report. He determined that Mr. Russell had committed an act of workplace violence by making inappropriate statements over the telephone to his supervisor, Mr. Krahn, who was not the grievor. The investigation further concluded that Mr. Russell presented no specific threat to the grievor's personal safety or to that of any other employee. Mr. Leek raised concerns that the grievor had provoked Mr. Russell to act inappropriately. The report also recommended certain administrative actions to increase the grievor's physical security in the office (Exhibit 30, paragraphs 26 and 27, and the annex).

382 On October 1, 2015, following a review of each of the three investigation reports (the harassment investigation report, Ms. Meroni's report, and Mr. Leek's report), and after having met with the grievor to hear her response to the harassment and Ms. Meroni's reports, the Chief Enforcement Officer terminated the grievor's employment (Exhibit 6, tab 72) on the basis that she had been found to have committed four acts of harassment that had been intended to demean and belittle Mr. Russell. In addition, she was found to have abused her authority and to have demonstrated a lack of respect for the employer's authority. Mr. Owen concluded that she had breached the employer's code of values and ethics and that the relationship of trust between employer and employee had been irreparably broken.

383 The founded allegations of wrongdoing by the grievor established a serious pattern of insubordination. When confronted with the harassment allegations, she took reprisal actions against Mr. Russell and others in her sphere that she perceived were acting against her interests. She consistently denied any wrongdoing until her very limited and qualified acknowledgement of culpability, which occurred in the late stages of the hearing. She continues to show a lack of insight for the impacts of her actions on Mr. Russell.

384 The Harassment Investigator concluded that the grievor was culpable of four acts of harassment against Mr. Russell, which were that she did in fact make comments about his hiring being from the "old boys' club", that she did improperly deny him the right to participate in the regional shotgun practice, that she arbitrarily and without consultation rescheduled his swift-water rescue training course, and that she unreasonably denied his request to reschedule training so that he could take it in Vancouver rather than having to travel to take it. The merits of each finding will be discussed separately.

1. Harassment allegation 1: The "old boys' club"

385 Mr. Russell deployed from Prince George to Nanaimo in 2009 under previous management. The Harassment Investigator determined that the grievor used language to the effect that he had obtained his position in Nanaimo through "the old boys' club" and a "back room deal" in a manner that was intended to be disparaging.

386 The grievor denied making such a comment. In her testimony at the hearing, she claimed that she well understood that deployment was a legitimate staffing option and that any comment she made was with respect to ensuring future transparency in staffing actions she conducted, in contrast to Mr. Russell's enquiries about hiring an acquaintance of his from the British Columbia Conservation Officer Service.

387 Mr. Russell's complaint of an inappropriate comment was corroborated in testimony by evidence given by Messrs. Fraser and Brochez. Both confirmed to the Harassment Investigator and again in their *viva voce* evidence that the grievor made this or a similar comment about Mr. Russell's deployment and the lack of transparency in past staffing processes Furthermore, Mr. Leeden confirmed that he did not hear that exact comment but confirmed that the grievor had expressed that future staffing would be transparent, unlike what had happened in the past (Exhibit 5, tab 41, page 4).

388 Furthermore, the grievor acknowledged that she had commented that she wanted to ensure transparency in future processes. She stated to the Investigator that she might have stated that she expected transparency and that there would be no more backroom deals; however, she had directed no comments towards Mr. Russell (Exhibit 5, tab 41, paragraph 13). At the hearing, she reiterated that she believed that a deployment without an advertised selection process lacked transparency. In contrast, in 2015, she inquired about the propriety of deploying an officer from the British Columbia

Conservation Officer Service with Mr. Goluza (Exhibit 60), essentially the same thing that Mr. Russell had inquired about.

2. <u>Harassment allegation 2: The shotgun practice</u>

389 The Investigator concluded that the grievor had excluded Mr. Russell from an all-team shooting practice without bona fide reasons, which negatively impacted him in that it had potential safety consequences, delayed his recertification, and added to his sense of exclusion and isolation from the team when he was returning to work after a period of illness.

390 The Investigator noted that the grievor did not have valid reason to challenge Mr. Russell's fitness-to-work certificate. There was no evidence that she actually followed up to obtain further information on his fitness to work, and she made comments to Messrs. Leeden and Brochez suggesting that he was excluded because of personal safety concerns, not any other reason. The credibility of this explanation was corroborated by the statements she made a few weeks later to the employer's training and learning coordinator (Exhibit 5, tab 41, pages 30 to 34; in particular, paragraphs 229 and 230).

391 After the fact, including at the hearing, the grievor offered two justifications for her decision to exclude Mr. Russell from the shotgun practice. Firstly, she has stated her actions were prudent management of an employee returning from a lengthy stress-related leave. Secondly, Mr. Russell did not meet the "Enforcement Branch Firearms Directive" requirements to handle firearms as part of his duties and therefore could not have been allowed to participate.

392 The explanation that Mr. Russell's medical certificate was inadequate and that it required further explanation is not reasonable for several reasons. First, the note provided by Mr. Russell's physician is clearly responsive to the employer's questions. The doctor indicated that he had considered all the information before him and that he had determined that Mr. Russell was fit for work (Exhibit 5, tab 9). When accommodation is not required and fitness to work is not in question, the employer is not entitled to further medical information, and no further information was required to respond. The jurisprudence is clear that the employer's right to demand medical information is exceptional and is strictly limited by employees' privacy rights (see *Canada (Attorney General) v. Grover*, 2007 FC 28 at paras. 66 to 70)).

393 The grievor's preference for further information, including a psychological

assessment, was not justifiable under the circumstances. Moreover, while she asserted that Mr. Russell's doctor worked at a "walk-in" clinic in a "strip mall", Mr. Russell testified that while his doctor's offices were located within such a clinic, he had had a regular and ongoing relationship with this doctor since 2012.

394 Second, the Harassment Investigator noted that the grievor made no further follow up on her interest in obtaining more information. She admitted in her evidence that the Labour Relations Advisor that she contacted on the same day she received the medical note advised her that there was no basis for further review, that the note should be accepted as-is, and that Mr. Russell should be allowed to return to duty, without medical limitation.

395 Mr. Goluza testified that in his opinion, the doctor's note was sufficient. The grievor testified that she believed that further consultation with Mr. Goluza was necessary. There was no evidence as to whether it occurred, but the evidence was that she expressed frustration that Mr. Goluza did "whatever Labour Relations told him" and that there was no further follow up with Mr. Russell and his doctor.

396 Third, the explanation that Mr. Russell required further certification before he could participate in a shotgun practice was an *ex post facto* explanation that was inconsistent with reasonable interpretations of policy, actual practice, and documentary evidence. Mr. Bell testified that regular practice was an integral part of the certification process required by the firearms directive and that certification was a requirement before officers handled firearms in the field (Exhibit 21, paragraph 55), not before they participated in practices intended to improve skill and knowledge. The evidence further shows that departmental firearms must be handled to obtain certification (Exhibit 61) and that practice is part of the training continuum (Exhibit 21, paragraph 27).

397 Mr. Russell was well versed in firearm usage and had used departmental and personal firearms extensively before the new policy commitments and standardized training were implemented. Further, in April 2012, the grievor approved Messrs. Russell and Fraser joining local gun clubs for the purpose of maintaining their qualifications on departmental firearms (Exhibit 5, tab 6). Such an approval is illogical and inconsistent with her stated belief that Mr. Russell was unauthorized to handle departmental firearms.

398 Finally, the grievor testified that she believed there was no lasting impact on Mr. Russell as a result excluding him from the shotgun practice. She testified that he

was able to recertify within six months and that he was kept out of the field while he worked on his work plan. However, such a statement accepts no recognition of the lasting psychological impacts on him from being excluded from the team. The evidence on record shows that he was increasingly isolated and that he lacked trust in his colleagues as the conflict with the grievor evolved and escalated.

3. Harassment allegation 3: Swift-water rescue training course

399 The harassment investigation determined that the grievor inappropriately contacted the swift-water rescue training course provider, Raven Rescue, to reschedule that course to adjust for an arbitrary work deadline that Mr. Russell was unaware of (Exhibit 5, tab 41, paragraphs 303 to 306). She acknowledged that she contacted Raven Rescue to discuss the course in question but maintained that she did not ask it to change the course. She insisted that she asked only about options, which she intended to consider later with Mr. Russell. Furthermore, she maintained that the work deadline was not arbitrary; she wanted to facilitate Mr. Russell attending the Harmac mill so that he could investigate as soon as possible and conduct in-person interviews of staff there before memories faded. In addition, she was concerned about Mr. Russell deferring the investigation, based on past concerns about his work performance.

400 The grievor's explanation does not seem likely, based on the balance of probabilities, when considered against the documentary record. First, emails between her and Mr. Russell clearly set out the discussions about the Harmac mill investigation. In their exchange, he sets out that he does not believe physical evidence will still be available at the spill site and that he would like to conduct more background research; however, he would attend as she had directed.

401 The grievor did not respond to Mr. Russell's message but instead contacted Raven Rescue, setting off a series of events (Exhibit 5, tab 17). She testified that she was trying to balance work priorities, Mr. Russell's stated intention to take time off to go hunting, the location of the training, and impending cold weather, which would be unsuitable for the training. She stated that she believed that Raven Rescue "could have come back with half-a-dozen options." However, when Mr. Russell asked Raven Rescue to explain why his course had been changed, her contemporaneous explanation simply justified why the change was necessary based on work and personal priorities (Exhibit 5, tabs 18 and 19). She made no suggestion that the change was unexpected or attempt to confirm if the timing was suitable. She made no follow up with Raven Rescue to determine if other course options were suitable.

402 Raven Rescue's ability to unilaterally make a decision balancing these priorities seems improbable. Even accepted at face value, the grievor's explanation confirms that she contacted Raven Rescue to explore a course change without informing Mr. Russell of her intention, that she did so without telling him of the need to change the course, and that she did not even tell him of her preference as to timelines for the Harmac mill investigation when he had clearly requested her preferences in their email exchange the same afternoon.

403 Moreover, the grievor denied that she believed this action amounted to harassment, that a one-month delay taking the course had any lasting impact on Mr. Russell's career, or that her actions had psychological impacts on him. Mr. Owen, as the delegated manager responsible for the harassment prevention policy, stated as follows in *viva voce* testimony: "I don't believe delay in the course caused the harm, it was her doing it that caused the harm. That she changed it without telling him, it would be belittling to him." Suggesting the consequences of her actions are limited to the one-month delay in training suggests a failure to comprehend the significance of her actions as a manager on subordinate employees.

4. <u>Harassment allegation 4: Project management course</u>

404 The Harassment Investigator found that the grievor unnecessarily and arbitrarily denied Mr. Russell's request to change the dates and location of an optional training course, escalated the matter to Labour Relations in a bellicose email, and then provided a convoluted response to Mr. Russell that ultimately acceded to his original request (Exhibit 5, tab 41, paragraph 342). As with the swift-water rescue training course, the entire basis of this exchange is set out in emails. The parties' testimony must be weighed against their explanations of their intentions and the impact of their actions.

405 Both Mr. Russell and the grievor acknowledged that the discussion at the time his learning plan was developed revolved around his stated interest in finding work elsewhere because he was not satisfied with his work environment. These are the career goals that come up later and that she claimed she sought to support. As such, she ought reasonably to have understood any exchange on the topic as being delicate.

406 In both his emails and his testimony, Mr. Russell stated that he was interested in taking the course closer to home, saving time and expense, and that he was not very interested in the course but was taking it at the grievor's insistence. He testified that he would have agreed to anything to get out of the meeting with her at which the

learning plan was discussed. She stated that she was concerned about any delay in him taking the course because she felt that he would not complete it as agreed and that she wanted him to take the project management and selection interview courses as soon as possible to prevent the matter from slipping.

407 However, given her stated concern with costs and travel time at that point, as evidenced a few months earlier with respect to the swift-water rescue training course exchange, as well as Mr. Russell's concrete proposal to take the course a few months later in Vancouver, her explanation seems inconsistent. Moreover, her own evidence, as well as any reasonable interpretation of it, would suggest that escalating this matter to Labour Relations was a clear signal to Mr. Russell that she viewed their exchange as problematic.

408 The grievor was clearly girding for a fight, and as such, the Investigator reasonably concluded that her message was bellicose. Her response to Mr. Russell, after consulting with Labour Relations, ought to have been as simple as stating "please go ahead and register" but instead was an obtuse cut-and-paste of policy statements that further confused the matter.

409 Ms. Meroni's fact-finding investigation, which followed the harassment investigation, concluded that the grievor had interfered with a witness to the harassment investigation and that she had breached her confidentiality obligations by speaking to Mr. Fraser, telling him that she had reviewed his statements to the Investigator and that she was displeased. She flatly denied that this exchange occurred. Mr. Fraser testified both to Ms. Meroni and at the hearing that it occurred. Both he and Ms. Meroni submitted contemporaneous notes that support their contentions. Furthermore, Mr. Fraser testified that he recounted the events to the Harassment Investigator shortly after it is alleged they occurred.

410 The grievor submitted that Mr. Fraser's recollection ought to be suspect, as he had a history of mental health issues for which he ws required to seek medical treatment. However, the alleged incident took place at a time when Mr. Fraser had just completed a fitness-to-work assessment and had been found fit to return to full duties. It occurred during a meeting with the grievor at which they discussed his reintegration into the workplace. Mr. Fraser's recollections of this incident were clear and consistent over a prolonged period and ought to be seen as reliable.

411 The misconduct investigation determined that the grievor inappropriately

accessed Mr. Russell's leave records in PeopleSoft at a time when he did not report to her. She and Mr. Russell had been separated during the harassment investigation following his return to work from sick leave in March 2014. During this time, he reported to Mr. Krahn; however, she remained his substantive manager on paper and his default supervisor in PeopleSoft. When making PeopleSoft entries, Mr. Russell would manually change the name of his supervisor from the grievor to Mr. Krahn before submitting leave requests (Exhibit 6, tab 68, page 5). This meant that the grievor was not required to perform any managerial function with respect to his leave in PeopleSoft when they were separated.

412 Despite this, the grievor accessed Mr. Russell's leave records to determine whether he had been at work on the day he filed his ATIP requests. She then emailed Mr. Goluza on March 31, 2015, to advise that she had checked Mr. Russell's leave status and that he had not been on leave on that day (that is, to demonstrate that Mr. Russell was working on the harassment complaint while at work; Exhibit 5, tab 32).

413 The grievor maintained that she does not believe she misused the system; rather, she asserted that she was helping Mr. Goluza and Mr. Krahn, as part of the management team, deal with Mr. Russell. Furthermore, since she fully expected to be exonerated in the harassment investigation and expected that she would resume managing Mr. Russell when the investigation concluded, her opinion was that she had a right to know what he was doing during work hours. As such, any use of the PeopleSoft system was to be for work-related purposes and not to advance a personal interest.

414 The grievor asserted that Mr. Goluza condoned any such actions. In particular, she had accessed Mr. Russell's leave transaction records once before and had reported it to Mr. Goluza; he did not tell her that it was inappropriate. As such, she asserted that her conduct was condoned, if not expected. However, the parties were separated after the harassment complaint was filed and during the investigation period. The instructions she received about the separation were unambiguous, and she had previously taken steps to ensure that Mr. Russell did not participate in her team's activities (Exhibit 5, tab 64, attachment 36). Furthermore, condonation requires that management clearly understand inappropriate conduct (see *Chopra v. Deputy Head (Department of Health)*, 2016 PSLREB 89 at para. 83).

415 The first email to Mr. Goluza was at best ambiguous. In January 2015, the grievor wrote the following: "yes I have since checked he used up his one-time vacation allotment" (Exhibit 5, tab 27). That contrasts with what she wrote in March 2015, as

follows: "I have verified in the on-line [*sic*] leave system that Mr. Russell was not on leave that day" (Exhibit 5, tab 32). Furthermore, in *viva voce* testimony, Mr. Goluza testified that her January comments were part of a bigger message relaying several issues of concern, while the sole point of the March email was to relay that she had determined that Mr. Russell worked on the complaint while at the office.

416 The misconduct investigation also determined that the grievor took inappropriate managerial actions towards Mr. Russell at a time when he did not report to her by directing building security to remove his card access to the employer's Burrard Street offices. On April 12, 2015, the grievor emailed the Manager of Regional Security and instructed her that Mr. Russell's building access was to be cancelled (Exhibit 5, tab 37). The misconduct investigation determined that she did so with no managerial authority and that by using her manager email signature, she inappropriately used her position to implement a managerial decision outside her scope of authority.

417 The grievor maintained that she did not make use of her position, that her email signature appears on all her outgoing emails, and that she simply took reasonable action to protect herself and her officers from Mr. Russell. Furthermore, she noted that Mr. Goluza was out of the office at the time, and when he was consulted later, he agreed to suspend Mr. Russell's access to the building for one week (Exhibit 6, tab 68, page 4).

418 The grievor's explanation makes little sense in light of the context. She sent the message to the security manager while being well aware that she was not to have any involvement in managing Mr. Russell (see, for example, Exhibit 6, tab 64, attachment 36). Furthermore, Mr. Goluza had presented several options to her to address her safety concerns other than restricting Mr. Russell's access to the Burrard Street offices. She had been provided with advance notice of the harassment investigation report's release as requested, had been allowed to work from home, and had a right to refuse unsafe work under the *CLC*.

419 Ultimately, she took sick leave and was not in the office during the week in question (Exhibit 6, tab 78). In addition, her history with Mr. Goluza demonstrates that he was readily accessible via his Blackberry and that he had been supportive of her concerns with respect to Mr. Russell and her concerns for her personal safety (for example, during the Personal Defensive Tactics training, he pulled her out to discuss her concerns and then carried out group work directly with her). She emailed the security manager over a weekend; instead, she should have attempted to raise her concerns with Mr. Goluza before escalating the matter directly to Security.

420 The grievor's explanation that she was not acting as a manager is not plausible. She knew that only an employee's manager had the authority to make such a request. She was well aware of the separation obligations between her and Mr. Russell, but beyond that, she knew that the harassment process is confidential and that other parties, such as the Security Manager would have known little if anything about the arrangement. As such, she ought reasonably to have known that the Security Manager would take her request as an authorized request coming from management.

421 Indeed, later, the Security Manager advised Mr. Goluza that she expected that the decision had been coordinated with his approval (Exhibit 5, tab 38). By all accounts, Mr. Goluza was supportive and readily accessible.

422 In cross-examination, the grievor acknowledged that she believed that she had a better situational awareness of the risk presented by Mr. Russell based on her years of working with him and her review of his harassment complaint, which Mr. Goluza had never seen.

423 The grievor demonstrated persistent and unreasonable behaviour by attempting to restrict Mr. Russell's building access, even when she knew it was getting her in trouble. This can be observed in her repeated requests to Mr. Leek to limit Mr. Russell's building access (see Mr. Leek's testimony and Exhibit 4, tab 39, Appendix A, page 16), her requests to Mr. Engelmann, letters from her lawyer (Exhibit 5, tab 33), and the security manager Ms. Carrièree's statements to Ms. Meroni that the grievor appeared angry that Mr. Goluza had authorized only a one-week suspension of Mr. Russell's building access despite the grievor's inability to identify a specific threat posed by him (Exhibit 6, tab 68, page 3). Furthermore, Ms. Meroni considered the grievor's failure to consult with Mr. Goluza or to even advise him after the fact of her actions, coupled with her response to him on April 13, 2015, to his direction "… not to go around in the personnel file of someone who doesn't report to [her]" (Exhibit 5, tab 38) as disrespectful towards management (Exhibit 6, tab 68, page 16).

424 During a period of sick leave commencing on April 13, 2015 (i.e., the same day that the harassment report was due to be delivered and that Mr. Goluza authorized a one-week suspension of Mr. Russell's Burrard Street office access), the grievor set up an out-of-office message directing recipients to contact Mr. Gilliéron, a labour relations advisor (Exhibit 5, tab 40). At the hearing, she admitted to it and stated that it had been inappropriate and immature and that she regretted doing it. Her apology and contrition at the hearing must be understood in the context of her open disdain for Mr. Gilliéron

and her protestations that Mr. Goluza "would do whatever Dominique told him to do." She had previously sought to have Mr. Gilliéron removed as the advisor responsible to provide her advice, according to Mr. Engelmann's evidence; had made negative comments to Mr. Goluza and Mr. Leek about Mr. Gilliéron; and had made passive-aggressive comments directly to him (Exhibit 5, tab 64, attachment 14).

425 While the grievor denied that any impact arose from her actions, Mr. Goluza's evidence, both at the hearing and to Ms. Meroni, demonstrated that the other employees in his section received the grievor's out-of-office message, found it odd and concerning, and brought it to his attention. He found the message conveyed to other staff was untenable. Moreover, given that the grievor had a role as a manager responsible for contacts with outside agencies, including provincial authorities and the Public Prosecution Service of Canada, her actions could have had an impact, both in terms of conveying a message that was disreputable to the organization or that could have resulted in a security breach, in the event that enforcement-related material was conveyed to a Human Resources branch employee.

426 Lastly, the grievor's contrition at the hearing on this matter stands in stark contrast to her evidence to Ms. Meroni suggesting that Mr. Gilliéron was an entirely appropriate person to use on an out-of-office message (Exhibit 6, tab 68, page 11, and tab 64, page 15). She maintained this position until the hearing. Furthermore, her counsel reiterated at the hearing that she has done nothing wrong. Her admission of culpability in this respect came only after six weeks of evidence at the hearing.

427 The misconduct investigation found that the grievor had acted disrespectfully during a regional management team meeting towards Mr. Goluza in front of other members of his management team. He stated that she suggested that he had inappropriately influenced an officer not to participate in the workplace violence investigation and that he was not taking employee safety seriously. When Mr. Goluza challenged her about her comment, she stated the following: "I'm not accusing you but alleging as a rumour …" (Exhibit 5, tabs 48 and 50).

428 Even at the hearing, the grievor maintained that she did not assert that Mr. Goluza had acted inappropriately but rather spoke about the investigation and that a particular officer might be interviewed and that, according to her testimony, Mr. Goluza "shot her an angry look" (Exhibit 6, tab 64, page 18). She claims that she told him one-on-one after the meeting that she was "not accusing" him but that she was seeking to clarify what had happened in the course of the workplace violence

investigation. Mr. Goluza's account was corroborated by the testimonies of Ms. Portman and Ms. Graca, both who reiterated a similar account of the meeting and who produced contemporaneous notes showing that the grievor stated that Mr. Goluza had interfered with a potential witness (Exhibit 5, tab 46, and Exhibit 3, tab 35).

429 At the hearing, the grievor acknowledged some responsibility for this allegation of wrongdoing in that she admitted that she should not have talked about the ongoing workplace violence investigation and that she should not have questioned Mr. Goluza in front of the team. This explanation makes little sense given her continuing denial that she made the offending statements. She maintained that she did not say that Mr. Goluza influenced a witness or that he did not take safety issues seriously, which is the crux of the allegation of disrespect.

430 The misconduct investigation determined that the grievor acted inappropriately by initiating a fact finding into a conflict in the Nanaimo office between Mr. Fraser and Mr. Russell after Mr. Goluza had directed her not to pursue any such thing. She did so despite both the direction to separate herself from Mr. Russell for the duration of the harassment investigation process and Mr. Goluza's specific direction not to involve herself in this incident (Exhibit 5, tab 42). Furthermore, she responded to his direction disrespectfully by suggesting that she would go ahead, that he was not taking the matter seriously, and that he was taking direction from Human Resources (Exhibit 5, tabs 42 and 43).

431 At the hearing, the grievor agreed that she acted inappropriately because in her words Mr. Goluza "may not have had all the information [she] had" but that "he was the ranking officer", so she ought to have listened to him. Again, her contrition came late in the process. Furthermore, her comment was so qualified that it demonstrated a profound lack of insight into the impropriety of her actions. Aside from an insubordinate response to Mr. Goluza, she seemed to utterly lack appreciation that she ought not to have initiated a fact finding into a conflict involving Mr. Russell.

432 The grievor's May 11, 2015, end-of-day email to Mr. Goluza suggested that she had spoken to her officers (Messrs. Fraser and Brochez) and that any inappropriate conduct was by Mr. Fraser and did not amount to harassment (Exhibit 5, tab 44). However, the earlier emails (Exhibit 5, tabs 42 and 43) and her response to Ms. Meroni's fact finding (Exhibit 6, tab 64, page 20) suggest that it was unclear whether Mr. Russell, Mr. Fraser, or both were to blame.

433 It is unreasonable by any measure to suggest that the grievor was in a position to action any allegations of wrongdoing, whether Mr. Russell was an offending party or simply the target of someone else's outburst. The wrongdoing was not simply a matter of failing to heed a senior officer's advice. In a context in which the grievor had never previously led a disciplinary process with one of her employees, it was patently unreasonable for her to believe that she could objectively lead a fact-finding process involving an employee she had just been found to have harassed. There was a clear conflict of interest, which ought to have been obvious to an experienced manager and investigator.

434 The grievor relied on procedural defects to argue that the processes the employer used to investigate her conduct were not fair. However, a hearing before the Board is a hearing *de novo*, a new hearing, that remedies a procedural flaw at an earlier stage (see *Tipple v. Canada (Treasury Board)*, [1985] F.C.J. No. 818 (C.A.)(QL); and *Davidson v. Deputy Head (Canada Border Services Agency)*, 2017 PSLREB 42 at para. 171).

435 In terms of procedural fairness protections at earlier steps in the process, the grievor was given the basic ones of knowing the case against her and of being provided the chance to effectively respond. She was provided with the preliminary and final harassment reports and with an opportunity to provide both written and oral submissions to the Chief Enforcement Officer (Exhibit 6, tab 70). She was interviewed and provided extensive submissions to Ms. Meroni during the misconduct investigation. It is important to note that those submissions largely accept that the impugned conduct occurred (save an outright denial that she spoke to Mr. Fraser about his testimony to the Harassment Investigator). Her submissions focus on justifying her conduct or discrediting the other parties involved (Exhibit 6, tab 64).

436 The grievor relied on the preliminary conclusions of Ms. Meroni's fact finding and draft termination letters that Labour Relations provided to Mr. Owen as evidence of prejudgement. However, a decision maker is entitled to make preliminary conclusions as he or she reviews evidence. The obligation to not show a closed mind is met as long as the decision maker continues to review and consider evidence (see *McEvoy v. Canada (Attorney General)*, 2014 FCA 164 at paras. 41 to 44). The evidence demonstrated that a final decision was delayed because of the extent of the grievor's submissions and to ensure adequate time to consider them fully (Exhibit 41).

437 Workplace harassment is repugnant behaviour that merits discipline. Moreover, changing social values increasingly recognize the impropriety of harassing

behaviour and the harm it causes (see *Joss v. Treasury Board (Agriculture & Agri-Food Canada)*, 2001 PSSRB 27 at para. 40). Harassment must be defined carefully so as not drag in the frequent disputes that arise between employees and their managers in the workplace (see *Joss*, at para. 63). As defined in the employer's policies, it consists of both an objective element, in that it is objectionable and demeaning, and a subjective element, in that the victim or subject found it offensive. The conduct must be unwelcome and lead to adverse job-related consequences (see *Joss*, at paras. 59 and 69).

438 Moreover, harassment can be extremely subtle, and in that respect, it can be extremely insidious. Single serious incidents are more easily dealt with in the traditional grievance arbitration and adjudication context because each incident can be evaluated against standards of progressive discipline. A subtle pattern of bullying and harassing behaviour does not lend to the same calculus (see *Peterborough Regional Health Centre v. Ontario Nurses' Association* (2012), 219 L.A.C. (4th) 285 at para. 114).

439 However, difficulties quantifying the appropriate discipline do not mean that harassment and bullying can be tolerated in the workplace; it is axiomatic that they cannot be tolerated (see *Peterborough Regional Health Centre*, at para. 107). The subtle forms that harassment can take do not militate against findings of misconduct (see *Children's Hospital of Eastern Ontario v. Ontario Public Service Employees' Union*, unreported at para. 109; "*CHEO*").

440 In this case, each harassment finding involved subtle behaviours that might not justify a finding of misconduct on their own. However, taken collectively, the incidents show a pattern of targeted behaviours directed at Mr. Russell. The grievor's actions had a cumulative effect on him that was much greater than the sum of the parts. Moreover, her behaviour during and after the harassment investigation demonstrated an unrelenting determination to discredit him. This pattern continued even after her termination, when she continued to make ATIP requests with the goal of showing that he had committed wrongdoing (Exhibit 62).

441 In *CHEO*, minor misconduct amounted to serious harassment because the effect was amplified by its cumulative nature. The grievor in that case engaged in passive-aggressive behaviour including eye rolling, hostile body language, ignoring colleagues, and unreasonable questioning. She did not harass all her colleagues and did not act inappropriately all the time. However, her behaviour was sustained and ongoing. She ought to have known that it was unreasonable. The poisoned workplace, her colleagues' fear of reprisal, the importance of teamwork, and her unwillingness to accept

responsibility led the arbitrator to conclude that even absent just cause for discharge, reintegration was not appropriate (see *CHEO*, especially at paragraphs 129 to 131).

442 Similarly, in *Peterborough Regional Health Centre*, a pattern of negative conduct directed towards lower-ranking staff was determined to be harassment. Dismissing her colleagues' qualifications, rolling her eyes, and being uncommunicative were all inappropriate behaviours by the grievor in that case. The persistent pattern of behaviour combined with a lack of acceptance of wrongdoing amounted to an inability to establish a viable employment relationship (see *Peterborough Regional Health Centre*, at paras. 118 to 121).

443 The expectations placed on managers to lead by example means that they are held to a higher standard in terms of appropriate behavioural expectations (see *Bazger v. Ontario (Ministry of Community Safety) - Correctional Services*, Ontario Public Service Grievance Board, File PSGB #2014-2859 at para. 110). This elevated managerial expectation is codified in the employer's values and ethics code (Exhibit 6, tab 76, page 6).

444 A critical issue in assessing when the employment relationship has been irreparably severed is whether a grievor truly recognizes and acknowledges wrongdoing such that it can be concluded that he or she would not engage in such behaviour in the future (see *Rahim v. Deputy Head (Correctional Service of Canada)*, 2016 PSLREB 121 at para. 83). In this case, the grievor denied any wrongdoing up to the beginning of the hearing. When it ended, she made qualified admissions of responsibility, but she continues to deny that she harassed Mr. Russell.

445 Discipline can be justified on the cumulative effect of a pattern of unacceptable behaviour (see *Charinos v. Deputy Head (Statistics Canada)*, 2016 PSLREB 74 at para. 117). The grievor's continuing lack of insight into the significance of her actions suggests that substituting a lesser penalty would not advance the goal of corrective discipline (see *Stewart v. Deputy Head (Canada Border Services Agency)*, 2016 PSLREB 106 at para. 62).

B. <u>For the grievor</u>

446 The employer cited 11 grounds for disciplining the grievor; 4 were harassment, and 7 were acts of misconduct. Only 3 of the 11 were established, each of which was very minor. Given the grievor's 22-year service record and her clear disciplinary record, they did not warrant the level of disciplinary action imposed. The

employer acknowledged that taken individually, each ground is of little consequence. However, it would have the Board believe that taken as a group, they are of great significance and warranted terminating her employment. She disagreed, given her employment history. Even if all 11 were founded, which they were not, it would not be enough to justify terminating an employee with 22 years of service.

447 The first ground for discipline is related to the allegation of harassment that the grievor made comments about Mr. Russell being hired through the old boys' club. This occurred at a time when the viability of satellite offices was under review and when Mr. Russell was promoting hiring a friend of his from the provincial conservation service. Mr. Goluza insisted that any hiring was to be done via a transparent process, which is exactly what the grievor relayed to Mr. Russell.

448 The grievor categorically denied ever saying anything else during the harassment investigation process, the misconduct investigation, and at the hearing. She was fully aware how Mr. Russell got to the Nanaimo office and that deployments between offices were an appropriate means of staffing positions. Mr. Fraser said that Mr. Russell came to Nanaimo through a back-room deal; his evidence was completely unreliable.

449 The employer had the burden of proving this allegation. Mr. Brochez was at the meeting in question; why did the employer not ask him about the comment? The Board has only the grievor's evidence about the allegation before it, which the employer did not challenge. Another factor to be considered in dismissing this allegation is that the meeting occurred at least two years before the harassment complaint was filed.

450 Like the allegation concerning the old boys' club comment, the shotgun practice allegation is without merit. According to the grievor, the Training and Learning Coordinator told her that if Mr. Russell did not complete the required firearms safety course on April 10, 2013, he had to do so before he could be allowed to participate in the firearms practice, which was not an artifice invented after the fact. The grievor had good reason to refuse to allow Mr. Russell to participate in the practice; it was mandated by the employer's policy. The issue was not whether she accepted the doctor's note that he provided (see *Grover*, at paras. 66 to 70).

451 Like the old boys' club and the shotgun practice allegations, the swift-water rescue training course allegation is also not supported by the evidence. On August 9, 2014, Mr. Russell was assigned to the spill at the Harmac mill. The grievor directed him as to how to conduct that work since she was responsible for setting his

work priorities. She was aware that he had planned to take leave. Knowing this, she contacted the training provider and inquired about rescheduling his training. The training provider took it upon itself to reschedule the course. The grievor's evidence is consistent with the email exchanges in Exhibit 5, tabs 18 and 19. Since she never spoke to the training provider, it begs the question of how the employer could conclude that she had been untruthful about rescheduling the training.

452 Since Mr. Russell was able to complete his work, to go on leave as requested, and to take the swift-water rescue training course in the Nanaimo area where he lives, this whole incident is extremely minor and does not meet the definition of unwelcome conduct. It is perfectly acceptable for a manager to look at options for training for her staff. The grievor was merely looking out for the needs of her team and the employer's operational requirements.

453 Finally, the fourth harassment allegation, like the other three, is not supported by the evidence. The grievor and Mr. Russell had completed his learning plan as required by the employer's performance planning and review program. They had agreed that he would take a project management course in Gatineau, and as the time for it approached, he began making efforts to reschedule it. Being aware of his habit of postponing things he preferred not to do, she was worried that he would not meet the goals of his performance plan, so she insisted that he complete the training as agreed.

454 Mr. Russell emailed the grievor, refusing to complete it unless she agreed to the changes of date and location and commenting that he felt that she was pressuring him and was trying to push him out of her team. She was disconcerted by the tone his emails, so she consulted Labour Relations. She was advised to allow the change in course venue, which she did in a carefully crafted respectful written response that was based on excerpts from the employer's website (Exhibit 54).

455 The Harassment Investigator described the letter as unnecessarily verbose. The employer described it as settling in for a fight instead of de-escalating the situation. The grievor did de-escalate it; she consulted Labour Relations rather than pursuing an email war of words with Mr. Russell, which clearly does not meet the definition of "abuse of authority".

456 Ultimately, the impact on Mr. Russell was negligible. Everyone involved knew that he was troubled between 2012 and 2015, yet no one except the grievor did anything about it. Despite her insistence that more be done to investigate his mental

health, the employer accepted at face value the medical notes he provided from his physician. By January 2015, Mr. Goluza suggested that the employer should have a psychological assessment done of him. From the contents of Exhibit 39, it is clear that the employer had no plan on how to deal with Mr. Russell.

457 Everything the grievor did about this is proof that as his manager, she cared about Mr. Russell. She did everything within her power to manage him; the employer obstructed her from having a psychological assessment carried out. When she returned from maternity leave and assumed responsibility for managing her team, Mr. Goluza told her to manage Mr. Fraser and Mr. Russell with more face time, which she accepted. She put herself in a dangerous situation and met regularly with the both of them to manage their performance.

458 Between March 31 and May 11, 2015, the grievor did everything within her power to bring to the employer's attention her fears for her safety. In April 2015, she was presented with a response to a fitness-to-work questionnaire that did not answer all the posed questions and that she felt was unresponsive to her concerns. Mr. Goluza told her that she had to accept it. She wanted to discuss it with him, which was not insubordination.

459 The grievor wanted to explain to Mr. Goluza that she was genuinely afraid of Mr. Russell. She wanted to tell him that she kept a map with her showing the route to the Nanaimo Hospital when she was in Nanaimo, that she booked a hotel close to the police detachment, that he had lifted ceiling tiles searching for surveillance equipment, and that there were other signs of workplace violence.

460 She emailed the employer, stressing that it was incumbent on it to provide her with a safe workplace. In her March 23, 2015, email (Exhibit 12), she commented that Mr. Goluza's indifference to her fears was deafening and that she was alone. She contacted the Employee Assistance Program and the police, engaged legal counsel, and spoke to the Crown prosecutor, and still, Mr. Owen's theory was that she was not genuinely afraid of Mr. Russell and that it was all a pretext and a camouflage for her wrongdoing.

461 Mr. Goluza testified that he believed that the grievor was afraid of Mr. Russell. Mr. Owen did not ask him or Mr. Leek if either thought that she was afraid of him; Mr. Leek believed that she was genuinely afraid of him. Only Mr. Owen shared the theory that she had conjured up the threat because she suspected that she would be

investigated for misconduct. This theory is baseless, in bad faith, and worthy of an award of damages.

462 As for the allegations of misconduct that Ms. Meroni investigated, except for those acknowledged by the grievor, the rest are equally baseless. As for the first allegation, which was that the grievor breached the confidentiality of the harassment investigation process by speaking to Mr. Fraser about his interview with the Investigator, why was this not considered misconduct until May 2015 when it was reported to have occurred in December 2014? The Investigator advised the employer about it in a letter in February 2015 (Exhibit 2, tab 9, page 2), which did nothing with it until approximately six weeks had passed.

463 The grievor's evidence of the meeting at which the comment was alleged to have been made is to be preferred over Mr. Fraser's. The grievor took contemporaneous notes of the December 18, 2014, meeting, at which she took away Mr. Fraser's building senior duties. He was upset enough about it that he spoke to Mr. Goluza, yet neither one mentioned that the grievor had breached confidentiality. She was also alleged to have made a statement about grievances against her, which was untrue, as no grievance has ever been filed against her.

464 Mr. Fraser was not a credible witness, and his testimony should not be taken as proof or truth of anything because of his health and the lack of corroboration of his testimony. The Harassment Investigator did not corroborate his statements as reported by Ms. Meroni; she merely reported them.

465 In her direct testimony, the grievor admitted that there was no justification for her putting a Labour Relations contact on her out-of-office message. She was upset that her grievance had been denied and that the employer had continued to refuse her demands that Mr. Russell be sent for a fitness-to-work evaluation. She demonstrated remorse at the hearing but none throughout the investigation process. Early remorse would not have made a difference. The employer was committed to terminating her employment. Ms. Meroni would not inform her of the allegations against her in advance, and the termination letter was prepared two weeks before she was interviewed. Clearly, remorse would have meant nothing.

466 The reason for using progressive discipline is not to be found in *Wm. Scott & Co.*, 1976 CarswellBC 518, as many would argue. The test in that case is fact based. The proper approach to discipline is in *Telus Communications Inc. v. T.W.U.*, 2012

CarswellOnt 8771 at para. 74 ("*Telus*"), which allows employees to learn that they have done something wrong, allows them to correct their behaviour, and allows the employer to assess their rehabilitative capacity.

467 The grievor had no idea that termination was a possible outcome from either investigation. The employer took no time to assess her rehabilitative potential. Termination of employment is appropriate only if there is no rehabilitative potential. Determining the proper degree of discipline is not a mathematical equation. Discipline should not be so heavy-handed that the goals of rehabilitation and correction are lost (see *Telus*, at para. 71; and *Andrews v. Deputy Head (Department of Citizenship and Immigration)*, 2011 PSLRB 100 at paras. 88 to 90).

468 The employer was aware that the grievor had accessed Mr. Russell's PeopleSoft records in January 2015 when she was not his manager. She told Mr. Goluza that she had done so, and he did nothing. In fact, he thanked her for the information she provided him via that access. In cross-examination, the grievor admitted that she had accessed Mr. Russell's records in PeopleSoft at least twice. If she knew that doing so was wrong, why did she inform Mr. Goluza that she had done it? The answer is that she had never been told that she should not access Mr. Russell's leave records and that she did not know that doing so was wrong (see Exhibit 5, tab 32, and Exhibit 11).

469 The employer condoned her behaviour and could not rely on it as a ground for disciplinary action. The principle of condonation requires an employer to decide in a timely manner to discipline an employee for what it considers unacceptable behaviour. If it does not, then the behaviour has been condoned. Once condoned, the employer may not then rely on that same conduct to justify discipline (see *Chopra*, at para. 83).

470 The employer has blown out of proportion the security risk caused by the grievor identifying Labour Relations as her out-of-office contact. There is no evidence or basis for the allegations that she created a security risk. It might have embarrassed the employer and its representatives internally and externally, but that is not evidence of a security risk. There was no evidence that anyone ever contacted Mr. Gilliéron, who had tried contacting the grievor, or if so, how many contacted him.

471 As for the insubordination allegations related to the fact finding into the incident involving Mr. Russell and Mr. Fraser in May 2015, which the grievor was directed not to pursue, she testified that she was concerned that if she did not act, she would be in breach of the harassment policy. Her response to Mr. Goluza (Exhibit 5, tab 42) was

clearly insubordination, but in the circumstances, she felt that she had no other choice.

472 The grievor acknowledged that her comment at the regional management team meeting on May 11, 2015, which was that Mr. Goluza did not want Mr. Conroy to be involved in the workplace violence investigation, was inappropriate and unwarranted. It was made in front of Mr. Goluza's direct reports and should have been discussed with him privately. She never apologized to him for it. Despite this, the grievor testified that she feels that she could work with him again. Mr. Goluza testified that he could not, , because he was part of the decision to terminate her employment.

473 The grievor denied that she said that Mr. Goluza tried to interfere in the workplace violence investigation. She repeated allegations that he did not take workplace violence seriously, which she should have discussed with him privately and not in front of her colleagues. Through the grievance process, she gained the insight that how she addressed it was wrong; she believes that they can build on it to the point that she will be able to work with him again.

474 The grievor did not deny that she took the steps required to cancel Mr. Russell's access to the employer's Burrard Street offices in advance of the final harassment report's release. She was afraid of his response to the report; she fully expected to be exonerated. When she did it, she was unaware of the altercation between Mr. Russell and Mr. Krahn, according to her evidence. She had been told that a threat-risk assessment was being done, but she knew that it would not be complete before the final report's scheduled release on April 13, 2015, so she took matters into her own hands, according to her testimony. She cancelled Mr. Russell's pass only after the report's due date; it was not an act of reprisal. It had no direct impact on his duties. According to Mr. Goluza, her actions caused some minor administrative problems. The grievor's motivation was her safety.

475 The employer did not discipline the grievor for being deceitful in making the request, which was driven by her fears. It was an exceptional time that should not be sufficient to end an otherwise stellar career. Ironically, following her actions, Mr. Goluza agreed to suspend Mr. Russell's access to the Burrard Street offices for one week. When she was advised, she complained to her union representative that the employer was taking safety precautions only for a week. Shortly after that, she received an email from Mr. Goluza, which was the first time she was ever told that it was inappropriate for her to have accessed Mr. Russell's personnel file when he did not report to her (Exhibit 5, tab 38).

476 At this point, the grievor responded that she would take whatever steps she deemed necessary to protect her safety (Exhibit 5, tab 37). This is a case of an extraordinary employee who demonstrated a very short pattern of abhorrent behaviour that could not wipe out a long period of excellence and dedication to her employer and her team (see *Bird v. White Bear First Nation*, 2017 FC 477 at para. 28). She tried to deal with Mr. Russell and Mr. Fraser, but the employer stymied her efforts. She could not manage those difficult employees without its support.

V. Summary of the arguments for the complaint

A. For the employer

477 The *CLC*, at section 147, sets out that an employer may not take any disciplinary action against an employee for exercising rights under the *CLC*. Doing so is an unlawful reprisal. In *Vallée v. Treasury Board (Royal Canadian Mounted Police)*, 2007 PSLRB 52 at para. 64, the former Board set out the prevailing test to assess when a reprisal has occurred. Persons making complaints under the *CLC* must demonstrate the following:

> a) that they exercised their rights under Part II (s. 147);
>
> b) that they suffered reprisals (ss. 133 and 147);
>
> c) that the reprisals were of a disciplinary nature, as defined in the *CLC* (at s. 147); and
>
> d) that there is a direct link between them exercising their rights and the actions taken against them.

478 The onus is on the person making the complaint to demonstrate that such a reprisal occurred as it is not a reverse-onus situation under the *CLC*.

479 In *Paquet v. Air Canada*, 2013 CIRB 691, the CIRB formulated the following three-step analysis to determine if an act of reprisal occurred:

> 1) Did the employer impose or threaten to impose discipline?
>
> 2) Was the employee participating in a Part II process?
>
> 3) Did a nexus exist between the Part II process and the discipline?

480 In this case, as in *Paquet*, the employer conceded that steps 1 and 2 have been met but submitted that the complaint must fail at step 3 because there is no direct link or nexus between the discipline taken and the grievor's exercise of her *CLC* rights.

If other reasons exist for discipline, even in the overall context of an ongoing Part II process, the essential nexus does not exist (see *Paquet*, at paras. 60 and 78).

481 In *White v. Treasury Board (Correctional Service of Canada)*, 2013 PSLRB 63 at para. 142, the former Board described as follows the test for and the employer's ability to disprove allegations of reprisal in a reverse-onus situation under s. 136(6):

> *[142] The burden established by subsection 133(6) of the* Code*, which is proving that a contravention of section 147 did not occur, will be satisfied by the respondent if it can establish any one of the following:*
>
> *1. The complainant did not act in accordance with section 128.*
>
> *2. The respondent neither disciplined nor financially penalized the complainant.*
>
> *3. If the respondent either disciplined or financially penalized the complainant, it was not in any way related to the complainant exercising his rights under section 128 of the* Code*.*

482 This complaint is not a reverse-onus situation. However, the *White* test is still helpful to understanding, if the evidence undermines a finding that a reprisal occurred (see *White*, at para. 142).

483 The mere contemporaneous nature of safety and misconduct issues does not prevent an employer from taking action. An employee cannot use his or her rights under the *CLC* as a shield to inoculate otherwise reprehensible behaviour from attracting discipline (see *Aker v. United Parcel Service Canada Ltd.*, 2009 CIRB 474 at para. 38; and *Martin-Ivie v. Treasury Board (Canada Border Services Agency)*, 2013 PSLRB 40 at para. 59).

484 When the essential nexus does not exist between the *CLC* rights and the disciplinary action, the analysis under s. 133 stops. An employer may take disciplinary action for a good reason, a debatable reason, or no reason at all, as long as the *CLC* is not violated (see *Ouimet v. VIA Rail Canada Inc.*, [2002] CIRB No. 171 (QL) at para. 56). A short time between discipline and an exercise of *CLC* rights is not enough to establish a nexus (see *Vallée*, at para. 71). In this case, the grievor relied entirely on the timeline between events to establish a nexus, which was insufficient to discharge her onus.

485 The reasons for discipline are set out in full in the discipline letter (Exhibit

6, tab 72). Furthermore, the Chief Enforcement Officer, Mr. Owen, provided a detailed analysis in which he demonstrated his thought process at the time the disciplinary decision was made. He testified that he believed that valid safety concerns might mitigate a disciplinary sanction, which is not the same as saying it was the cause of the discipline (Exhibit 6, tab 71).

486 The incidents alleged as harassment started well before the grievor's sense of fear crystallized, which she acknowledged. Three of the four incidents occurred through email exchanges between parties not in the same city. Moreover, she made no attempt to exercise her *CLC* rights at that time or at any point until the harassment investigation report was about to be released. Even if the Board accepts that she feared Mr. Russell, she made no attempt to engage her rights under the *CLC* until the harassment investigation had already been completed. As in *Aker* and *White*, she could not exercise such rights after the fact to inoculate her from her misconduct.

487 Furthermore, the misconduct that occurred in 2015 and that Ms. Meroni investigated is independent of any link to the grievor's *CLC* rights. Instead, it shows a campaign to discredit Mr. Russell and to restore her reputation at all costs. Like in *IMTT-Québec*, 2011 CIRB 606, the grievor's behaviour showed disloyalty to the employer and blind determination to vindicate herself. It was blameworthy conduct independent of the exercise of her *CLC* rights (see *IMTT-Québec*, at paras. 85 to 90; upheld in *Anderson v. IMTT-Québec Inc.*, 2013 FCA 90).

488 The employer established credible grounds that fully account for its decision to terminate the grievor. The exercise of her *CLC* rights was not part of this equation; nor was there an absence of grounds for discipline so as to invite an inference that the reasons given were a camouflage for a prohibited reprisal by the employer. Management's reasons were fully canvassed in Mr. Owen's analysis and the termination letter (Exhibit 6, tabs 71 and 72).

489 The grievor suggested that the timelines of the events led to an inference of reprisal. However, the circumstances she suggested require a myopic look at the events and do not fully account for the circumstances around the time of her request for a workplace violence investigation. On April 3, 2015, her counsel wrote to the employer to request an investigation under the *CLC*. However, on April 2, she became aware that the final investigation report had been presented to senior management, and on April 10, she was given advance notice of the report's release (Exhibit 5, tabs 29 and 36). Then arose a marked escalation in misconduct. Furthermore, senior management

was clearly engaged in discussions about resolving the situation before receiving her counsel's letter on April 3. Consequently, both processes unfolded at the same time. Proximity in time is not sufficient to create a nexus.

B. <u>For the grievor</u>

490 The employer is correct that in *Vallée*, the Board set out the prevailing test to assess when a reprisal occurred. It is also correct that there must be a link between the exercise of the grievor's rights under the *CLC* and her termination. This link is obvious, looking at the timing of Ms. Meroni's investigation and the decision to discipline the grievor.

491 On April 3, 2015, the grievor's legal counsel, Mr. Korbin, contacted the employer, demanding that she be provided with a safe workplace (Exhibit 2, tab 60), which the employer had a fundamental duty to do. There is a clear link between that demand and the decision to investigate her for misconduct. Ms. Meroni received a copy of Mr. Korbin's letter on April 4 (Exhibits 36 and 37). She then decided to discipline the grievor in the early days of April.

492 On April 8, 2015, Ms. Meroni was aware that the grievor had accessed Mr. Russell's PeopleSoft records. On April 12, 2015, she was aware that the grievor had cancelled his access to the Burrard Street offices, and as a result, the decision was made to convene the misconduct investigation (see the chronology in Exhibit 3, tab 27).

493 The decision to investigate the grievor was clearly retribution. The employer did not care about the PeopleSoft access when the grievor had done it before in January 2015. Only after Mr. Korbin's April 3, 2015, letter did Ms. Meroni ask Mr. Goluza to advise the grievor that that access was unacceptable. The employer was clearly unhappy with the grievor and wanted to punish her. Likewise, it did nothing about the February 27, 2015, breach of confidentiality until after it received Mr. Korbin's letter. Coincidentally, it was Ms. Meroni's first-ever misconduct investigation and the first letter she had received related to the *CLC*.

494 *Res ipsa loquitur* (the thing speaks for itself). The two events are linked.

C. <u>Procedural fairness</u>

495 As neither party addressed the question of the impact of a breach of procedural fairness during their closing arguments, at the close of the hearing, I invited written submissions from them on a very limited question. The question posed was, if

I determine that the employer breached procedural fairness and the principles of natural justice during the disciplinary process, is the discipline imposed void as a result?

1. <u>For the employer</u>

496 In this case, the grievor alleged that breaches of natural justice and procedural fairness, tantamount to bad faith, tainted the disciplinary process. Specifically, she asserted that she was not made aware of the full allegations against her during the misconduct investigation and thus was unable to effectively meet the case against her and that during both the misconduct investigation and the subsequent disciplinary process, she did not have a fair hearing before an impartial decision maker because prejudgement had occurred.

497 Breaches of procedural fairness undermine an otherwise justifiable administrative decision. When a procedural breach occurs and a party has not had proper opportunity to defend itself before an unbiased decision maker, it has not been treated fairly. A procedural breach renders an administrative decision void and not voidable. Courts will not allow an administrative decision made in bad faith or an otherwise procedurally unfair manner to stand.

498 However, if a statutory appeal body exists, such as the Board, and the party has a right of review before an independent administrative decision maker, a new hearing cures any defects in the process. This is especially true when the appeal body conducts hearings that incorporate a high degree of procedural fairness, which serves as an effective remedy to any unfairness at earlier stages. An adequate remedy exists when the reviewing body is equipped with the means to remedy all injustices. A statutory appeal such as the grievance adjudication process enshrined in the *Act* satisfies this right. A fair hearing before a new decision maker, at which the employee is fully aware of the case against him or her and can respond to it, satisfies procedural rights and cures any earlier defects.

499 Bad faith requires the grievor to prove dishonesty of purpose. It cannot be presumed, and the courts have held that proving bad faith is an especially difficult task. Bad faith suggests that a party has sought to achieve its goals though misrepresentation. In the labour relations context, bad faith has been described as conduct motivated by conscious hostility, malice, ill will, dishonesty, or improper motivation. The essence of bad faith is dishonesty of purpose. Arbitrary conduct and bad faith conduct are not

mutually exclusive categories. "A decision made in bad faith may also be arbitrary … and arbitrary conduct may evidence bad faith" (see *Hamilton Public Library v. CUPE, Local 932* (2013), 238 L.A.C. (4th) 116 at para. 76).

500 In a disciplinary process, when a grievor has demonstrated bad faith on the part of the employer, he or she must show that it acted to hide the true reasons for discipline and that it instead created a sham to cover up the absence of proper motive. However, if proper motivation that is just cause exists, then any discipline was not in bad faith, despite any procedural errors that occur in the process.

501 Procedural fairness at an earlier stage in the process is cured by a *de novo* hearing before an adjudicator. In *Tipple*, the Federal Court of Appeal found as follows "… unfairness was wholly cured by the hearing de novo before the Adjudicator at which the Applicant had full notice of the allegations against him and full opportunity to respond to them."

502 The Federal Courts have consistently applied this doctrine for over 30 years. Case law that follows the principles in *Tipple* is extensive from both this Board and its predecessors. This doctrine has been widely adopted and accepted as trite law (see *Dawson v. Deputy Head (Correctional Service of Canada)*, 2017 PSLREB 12 at para. 44; *Dhaliwal v. Deputy Head (Correctional Service of Canada)*, 2016 PSLREB 112 at para. 56; *Rahim,* at para. 87; *Braich v. Deputy Head (Correctional Service of Canada),* 2017 FPSLREB 47 at para. 220; *Cavanagh v. Canada Revenue Agency*, 2015 PSLREB 7 at para. 259 (judicial review denied in 2016 FCA 27); *Pronovost v. Canada Revenue Agency*, 2017 PSLREB 43; *Maas v. Deputy Head (Correctional Service of Canada)*, 2010 PSLRB 123 at para. 118; *Pajic v. Statistical Survey Operations*, 2012 PSLRB 70 at para. 149; *Mohan v. Canada Customs and Revenue Agency*, 2005 PSLRB 172 at para. 93; and *Newman v. Deputy Head (Canada Border Services Agency)*, 2012 PSLRB 88 at para. 791).

503 Furthermore, the Supreme Court of Canada reiterated the principle in *Danyluk v. Ainsworth Technologies Inc.*, 2001 SCC 44, in which the appellant alleged that she did not have an opportunity to rebut her employer's allegations during the investigation. The Court stated as follows in obiter:

…

> *[32] If an internal review were ordered, an adjudicator would then have looked at the appellant's claim* de novo *and would undoubtedly have shared the employer documents with the appellant and given her every opportunity to respond and*

> *comment. I agree that under the scheme of the Act procedural defects at the ESA officer level, including a failure to provide proper notice and an opportunity to be heard in response to the opposing case, can be rectified on review….*
>
> …
>
> [Emphasis added]

504 Other jurisdictions have followed the same rule, accepting that a *de novo* hearing cures unfairness based on *Baird v. Almas*, 2002 CanLII 41846 (ON LRB) at paras. 62 and 67,. In *Durham (Regional Municipality) v. Canadian Union of Public Employees, Local 132*, [2011] O.L.A.A. No. 410 (QL) at para. 91, the arbitrator explained the logic thusly:

> ***91*** *… it would be wholly redundant and pointless to examine the thoroughness or the fair-ness [sic] of the employer's investigation since the grievor has available to him the grievance arbitration process whereby he can challenge the employer's conclusion that it had just cause to terminate his employment.*

505 When an employee or union has alleged bad faith and malicious conduct, the Board has found that a hearing before an independent adjudicator cures errors but that bad faith and malice could be included when considering damages. The Ontario Superior Court shared the same principle in *Filion v. Religious Hospitallers of St. Joseph of Cornwall*, 2016 ONSC 1008 at para. 116, as follows:

> ***116*** *The Court's view is that, in common law, the question of "procedural fairness" is not relevant to the issue of just cause. It may be significant to other issues such as general damages flowing from the unfair manner in which the employee was treated by the employer when summarily dismissal [sic]. However, it cannot stand as a shield against just cause in existence prior to termination, whether known or not by the employer.*

506 One notable exception to *Tipple* is *Shneidman v. Canada Customs and Revenue Agency*, 2004 PSSRB 133, in which the adjudicator held that a breach of representational rights during an investigation could not be cured by a hearing *de novo*. Due to the collective agreement's discipline provisions, the adjudicator found representation to be a substantive right rather than procedural. Consequently, she allowed the grievance, finding that the termination was void *ab initio*, or from the beginning, because the prejudice suffered would continue even if the investigation were excluded.

507 However, the Federal Court set aside *Shneidman*, based on an application of *Burchill v. Canada (Attorney General)*, [1981] 1 F.C. 109 (C.A.), which was that a grievance against a termination with a claim for a make whole remedy was not sufficiently broad enough to entail a claim for breaches of the discipline articles of a collective agreement. Furthermore, that Federal Court decision is specifically referenced in subsequent decisions in which the Board declined to declare termination void *ab initio* in similar circumstances, defaulting to the principle in *Tipple* (see *Canada (Attorney General) v. Shneidman*, 2006 FC 381; upheld in 2007 FCA 192).

508 Applying the *Tipple* principle to the facts of this case, the employer submitted that there is no evidence of bad faith conduct or dishonesty of purpose during the investigation or subsequent disciplinary process.

509 The employer has been forthright about its grounds for termination and submitted that it had just cause. Even if the procedural breaches alleged by the grievor were accepted as founded, they were wholly cured by the hearing *de novo*.

510 The grievor submitted that she was not fully aware of the allegations against her during the course of the misconduct investigation. However, she had the opportunity to probe them, including during the cross-examination of the Investigator, Ms. Meroni, at the hearing. Furthermore, she also alleged that she did not have an opportunity to respond to the final investigation report before the discipline was imposed, but this too was remedied by the *de novo* hearing.

511 Lastly, she alleged that prejudgement occurred. Any prejudgement is cured by a hearing held before an independent decision maker in which the employer has the burden of proving misconduct and in which the grievor has full access to remedies, including reinstatement. Consequently, and based on the principles that the Supreme Court set out in *Harelkin v. University of Regina,* [1979] 2 SCR 561 and that the Federal Court of Appeal set out in *Tipple*, a hearing before the Board cures any procedural defect.

2. <u>For the grievor</u>

512 The employer's breaches of clause 17.01 of the Agreement between the Treasury Board and the Public Service Alliance of Canada, Program and Administrative Services (all employees), expiry date June 20, 2014 (the collective agreement) and its cumulative bad faith and deceptive conduct was so egregious that the termination was void *ab initio* because of the employer's violation of the grievor's substantive rights and the breach of its duty of honest performance. Its cumulative actions during the

investigative process amount to a fundamental substantive breach of the grievor's collective agreement rights, which justify nullifying the termination or at the very least reducing the penalty. The lack of content in the termination letter violated her substantive rights under clause 17.01.

513 The first substantive breach of clause 17.01 was the employer's failure to disclose all its reasons for terminating the grievor, specifically Mr. Owen's addition of an additional ground for termination during the hearing, which was that the grievor invented her fear of Mr. Russell as a camouflage for her misconduct, based on his reading of Mr. Leek's report, which she was not provided. These two breaches are of such a fundamental or substantive nature that the discipline was void.

514 The grievor also submitted that the employer's bad faith, dishonesty, and blatant deception during the investigation process, combined with the two breaches of clause 17.01, cumulatively represent a substantive breach of the employer's duty of honest performance as set out in the Supreme Court of Canada's decision in *Bhasin v. Hrynew*, 2014 SCC 71, which cannot be cured by a hearing *de novo* and thus warrants nullifying or reducing the penalty that would otherwise be appropriate for the grievor's misconduct.

515 According to Brown and Beatty, *Canadian Labour Arbitration*, 4th edition, at 7:2140, whenever an employer fails to exercise its disciplinary powers according to required procedures, the arbitrator must decide the effect of the breach. If the defect relates to a provision in agreement collective agreement that is considered critical to the integrity of the process, many arbitrators are inclined to assume that the employee was irreparably harmed, and they will treat the discipline that was imposed as void *ab initio.* Some arbitrators consider rights that can be characterized as fundamental or substantive as being so important that they can never, or only with the clearest evidence, be waived. The grievor submitted that the rights protected under clause 17.01 are substantive, that violating them cannot be cured by a hearing *de novo*, and that a breach of that clause voids the discipline.

516 During the hearing, Mr. Owen's evidence was that in addition to the 11 grounds for termination from the harassment investigation and Ms. Meroni's misconduct investigation referenced in the termination letter, there was another reason. His evidence was that one of the reasons he chose to terminate the grievor was his belief that she had invented her fear of Mr. Russell and that she had used it as a camouflage for her misconduct. It was clear from Mr. Owen's evidence that this was a critical factor

in his decision to terminate her. She submitted that this was a breach of clause 17.01, which requires that the reason for a termination be disclosed to a grievor.

517 In the termination letter (Exhibit 6, tab 72), the employer refers to the four allegations in the harassment report and the seven allegations of misconduct in Ms. Meroni's investigation. The grievor was provided with the harassment investigation report in October 2015, well before her termination, but she was provided with Ms. Meroni's report only at her termination meeting with Mr. Owen, and she was told that she could read it later. Mr. Owen omitted including what was in fact one of his critical reasons for the termination, which he described was an important part of his analysis. The omission to disclose this additional ground for termination represents a clear and unambiguous breach of the employer's obligation under clause 17.01.

518 In *Burchill*, the Federal Court of Appeal required unions to be clear with grievance language so that parties would know the case they must meet. The grievor submits that the same reason applies to the employer when it drafts disciplinary or termination letters. When the continuation of employment is at stake, the statement of the grounds for the termination warrants a measure of precision and formality commensurate with its seriousness to the employee (see *Canada Post Corp. v. C.U.P.W.* (2001), 66 C.L.A.S. 97 at para. 43). Mr. Owen's evidence was that the security investigation report was the foundation for his 12th reason for terminating the grievor. It represents the entire basis and background for his belief that she invented her fear of Mr. Russell.

519 When a collective agreement provision has been interpreted as mandatory, arbitration boards and courts have characterized employee rights as substantive. In those cases in which provisions have been found directory, they have been considered procedural. Representational rights are substantive, mandatory, and fundamental, and if an employer fails to permit an employee to exercise such rights, it renders discipline or discharge void *ab initio* (see *Northwestel Inc. v. I.B.E.W., Local 1574* (1990), 13 L.A.C. (4th) 76). The language of clause 17.01 is not optional. The employer is required to advise a grievor of the grounds for a termination.

520 The grievor submitted that the employer's bad faith and dishonest conduct during the investigation process make a clear case that the entirety of its effort was a sham. In addition, she submitted that its cumulative bad faith and dishonest conduct and the two breaches of clause 17.01 were so serious and egregious that they went far beyond what is considered a procedural defect, and they could not be cured by a hearing *de novo*.

521 Ms. Meroni's bad faith was demonstrated by her reaching a predetermined outcome before completing her misconduct investigation. Mr. Owen's bad faith is more considerable because of his greater role in the termination process. His bad faith was reflected by his untruthfulness during the hearing on his knowledge of the draft termination letter, his untruthfulness about keeping an open mind, and his untruthfulness when he suggested that had the grievor expressed remorse, he might have changed his mind. In addition to the employer's bad faith and dishonest conduct, it is important to emphasize its barefaced deception of the grievor as demonstrated by Mr. Saint-Onge's handwritten notes on August 6, 2015, which set out the employer's plan to terminate her as early as that date.

522 On the same day that Mr. Owen outlined his plan to Mr. Saint-Onge to terminate the grievor, he told her that he would give the fullest consideration to her representations. Mr. Owen's actions are beyond simply having a closed mind. He was the decision maker, and he actively deceived her. He led her to believe that there would be a fair process in which her representations would be taken into account.

523 Pursuant to *Bhasin,* Canada now has a common law principle of good faith that underlines many facets of contract law. As evidence of good faith, that duty requires honest performance, which demands that the parties be honest with each other in relation to the performance of their contractual obligations. The parties generally must perform their contractual duties honestly, reasonably, and not capriciously or arbitrarily.

524 The duty requires the contracting parties to have appropriate consideration for the other party's interests and to not undermine each other in bad faith. The parties to the contract must not lie or knowingly mislead each other on the performance of the contract. It is clear that the Supreme Court of Canada has elevated the duty of honest performance to a substantive and fundamental duty. This is not a procedural matter that can be cured by a hearing *de novo*. The level of the employer's dishonesty and deliberate deception is a breach of the duty of honest performance, which represents a substantive breach of the grievor's rights and justifies nullifying the termination or at the very least reducing the penalty.

525 The grievor submitted that the employer's breaches of clause 17.01 and its cumulative bad faith constitute a denial of her basic rights beyond mere procedural entitlements, which cannot be cured by a hearing *de novo*. Its conduct was so egregious and wanton that it cannot be undone. Arbitrators have characterized such rights as

substantive and fundamental; breaching them voids discipline.

526 The adjudicator in *Evans v. Treasury Board (Employment and Immigration Canada)*, PSSRB File No. 166-02-25641 (19941021), [1994] C.P.S.S.R.B. No. 129 (QL), stated that unlike in *Tipple,* which involved more than simple procedural fairness, the nature and purpose of the rights given to employees should be treated liberally. Unfairness must not be allowed to be part of the discipline process. Similarly, in *Shneidman*, the adjudicator referenced *Tipple* and found that it did not apply because the breach at issue was substantive, not procedural.

527 A key part of the employer's written submission relied on *Tipple*. The breaches alleged by the union in *Tipple* were minor in comparison to those in this case and do not reach anywhere near the substantive or fundamental breach that the union submits occurred in this case. *Tipple* is entirely about minor procedural defects.

3. <u>The employer's rebuttal</u>

528 The employer submitted that the grievor's written submissions do not address the adjudicator's question for which submissions were requested. Rather, hers are an attempt to argue positions that ought to have been raised at the hearing, and they are an improper attempt to reopen her case after the hearing closed.

529 In its submissions, the bargaining agent asserts as fact certain statements attributed to Mr. Owen, which are that he identified further grounds of discipline than those listed in the termination letter. The employer submitted that the issues raised by the grievor's submissions are not responsive to the Board's question for which it requested written submissions. The employer also submitted that these assertions are inconsistent with the evidence. It denied that Mr. Owen said what it is alleged he said. The employer submitted that it is improper to debate facts in the written submissions phase, after the evidence phase has closed.

530 Furthermore, the grievor newly alleged in her submissions several breaches of the collective agreement, which were not raised in the grievance process. This conflicts with the *Burchill* principle, which states that the substance of a grievance cannot be altered once it is before the Board.

531 Finally, *Shneidman*, cited by the grievor, does not stand for the principle for which she cited it. It was overturned specifically because a grievance against a termination with a claim for a make whole remedy was not sufficiently broad to entail a

claim to breaches of the discipline articles of the relevant collective agreement.

D. Remedy

1. For the employer

532 The employer submitted that termination was an appropriate sanction for the grievor's serious misconduct and that it ought to be left untouched. Furthermore, it submitted that the s. 133 *CLC* complaint is without merit as there is no nexus between the grounds for discipline and the exercise of the grievor's *CLC* rights.

533 As an alternative position, if the Board determines that the termination was not justified, the employer respectfully submitted that the Board ought to consider the viability of a continuing employment relationship and the prospects of a successful reintegration before determining that reinstatement is an appropriate remedy.

534 Since *Lâm v. Deputy Head (Public Health Agency of Canada)*, 2011 PSLRB 137, the Board has recognized that in exceptional circumstances, reinstatement is not an appropriate remedy, and damages in lieu ought to be ordered.

535 The most commonly accepted framework to evaluate when reinstatement is not appropriate was established as follows in *DeHavilland Inc. v. National Automobile, Aerospace, Transportation and General Workers Union of Canada, Local 112* (1999), 83 L.A.C. (4th) 157, as cited in *NAV Canada v. International Brotherhood of Electrical Workers, Local 2228* (2004), 131 L.A.C. (4th) 429:

> 1) the refusal of co-workers to work with the grievor;
>
> 2) a lack of trust between the grievor and the employer;
>
> 3) the grievor's inability or refusal to accept responsibility for any wrongdoing;
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> 4) the grievor's demeanor and attitude at the hearing;
>
> 5) animosity by the grievor towards management or co-workers; and
>
> 6) the risk of a "poisoned" atmosphere in the workplace.

536 During the hearing of this grievance, the Board heard significant evidence from the grievor's colleague managers and supervisors at senior levels. They were unanimous that they would have serious difficulties working with her in the future and that they would consider leaving the organization were she reinstated. They noted patterns of behaviour independent of the harassment and misconduct allegations

consistent with those for which she was disciplined.

537 The history of the conflict is not limited to an isolated outburst following the harassment report's release. As subordinate employees, both Mr. Fraser and Mr. Russell similarly commented that they would be unable to work with the grievor in the future. While other employees reported no such problem, it is significant that she was in conflict with those employees requiring active management and that she had good relations with those who worked autonomously or with the junior officers she could mentor. Even many of the junior officers who testified on her behalf commented that they would not want to be on her bad side.

538 Senior management, including Ms. Meroni and Mr. Owen, testified that they would anticipate significant impacts were the grievor reinstated and that they require a high level of integrity from enforcement officers, which they did not see from her and do not anticipate that they will see from her, given her actions. At its core, this amounts to a broken bond of trust.

539 The grievor's lack of contrition was noted throughout the lengthy hearing. She continues to deny that she harassed Mr. Russell. Furthermore, she lacks insight into the impropriety of her actions directed towards him following the harassment investigation. She lacks any insight into the impropriety of other of her actions for which she has accepted only limited responsibility.

540 Her behaviour at the hearing ought to be considered in light of the test set out as follows in *Faryna v. Chorny*, [1952] 2 D.L.R. 354: "The credibility of interested witness [*sic*], 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 subject a witness's testimony to the evidence and the "… preponderance of probabilities disclosed in the surrounding circumstances".

541 At the hearing, the grievor demonstrated that she continues to have high levels of disdain for her managers, labour relations advisors, and Mr. Russell. She felt that senior management did not take her complaints seriously and that the labour relations advisors did not have the training or competence to assist her or to deal with the harassment process. She continues to have safety concerns related to Mr. Russell's presence in the workplace despite the outcome of Mr. Leek's report.

542 Every witness who testified spoke to a poisoned atmosphere in Coastal

District team and the Nanaimo office. Most noted that the atmosphere has been restored since the grievor left. There was no consensus that her departure facilitated that change; however, a number of colleagues and subordinates were clear that were she to return, her relationships with these people would not be viable. Even among the witnesses she called, there was evidence of her contribution to poisoning the work environment. Mr. Brochez testified to the impact of her instructions that he look at the list of Mr. Russell's ATIP requests and of what happened when he took the ATIP cover sheets that she directed him to look at. Mr. Leek testified that he was concerned that her actions amounted to provocation directed towards Mr. Russell.

543 In *Lâm*, the Board did not apply *DeHavilland Inc.* strictly but instead evaluated similar considerations. The adjudicator in that case questioned whether reinstatement would have a reasonable chance of success based on the work environment, the impact on colleagues, and the grievor's overall past behaviour, which had been incompatible with a healthy workplace (see *Lâm*, at paras. 102 to 112). Each of these factors militates against the grievor's return.

2. <u>For the grievor</u>

544 In addition to reinstatement to her position with full payment of salary, benefits, and other entitlements, the grievor asked for damages for mental distress and punitive damages as a result of the employer's bad faith and her egregious treatment throughout this process.

545 Ms. Meroni's investigation was flawed. The grievor was not interviewed before Ms. Meroni reached her conclusions, which was a breach of natural justice. Ms. Meroni interviewed all her witnesses and wrote her preliminary report, including her conclusions, before interviewing the grievor (see the preliminary report in Exhibit 3). The grievor was not even invited to an interview until the conclusions were drafted. She was notified on May 11, 2015, of the investigation, was invited to an interview on June 22, 2015, and was interviewed on August 10, 2015. She did not receive a copy of the preliminary report.

546 When the grievor asked for details of the allegations against her, the employer refused to provide them. Instead, Ms. Meroni tried to rely on the allegations in the letter provided to the grievor notifying her of the misconduct investigation. The grievor had to file a grievance to receive any information on the allegations against her. By then, Ms. Meroni had written her preliminary report and conclusions.

547 The grievor provided Ms. Meroni a lengthy submission (Exhibit 3, tab 46) electronically for her consideration after their interview. Ms. Meroni received it on August 13, 2015, and then issued her final report with conclusions on August 14, 2015. She did not ask the grievor a single question about her submission, and the grievor submitted that Ms. Meroni did not in fact even consider it. Ms. Meroni had a closed mind from the outset.

548 Mr. Owen compounded this demonstration of bad faith by combining the harassment investigation and the reports of Ms. Meroni and Mr. Leek and deciding that it was cleaner to deal with the three of them together. He testified that he wanted to hear from the grievor before he made up his mind as to how he would deal with the outcome of her case and that he did not know that Labour Relations had already prepared termination letter (Exhibit 6, tab 67) by the time the meeting with her occurred. This statement was false and was designed to mislead the Board. Mr. Owen knew about the termination at least by August 17 (Exhibit 35) and admitted in his evidence that he expected that that would be his outcome. He then met with the grievor on August 28.

549 In direct examination, Mr. Owen stated that it would have been fundamentally unfair to make his decision without hearing from the grievor first, but he also admitted that by August 17, the employer had determined that it would terminate her employment.

550 On August 6, Mr. Owen and Mr. Saint-Onge developed a plan on how they would terminate the grievor's employment (Exhibit 46), which is proof positive that Mr. Owen had a closed mind. Mr. Owen and Ms. Meroni then coordinated their meetings with the grievor so that they could give effect to this plan (Exhibit 40 and Exhibit 6, tab 63). When the meeting between Mr. Owen and the grievor took place, she was limited to the one hour originally set for it and was not allowed any extra time. It was clear that Mr. Owen was not interested in her evidence, as he had already made his decision.

551 Mr. Owen commented that the grievor did not speak up or show any remorse at the termination meeting on October 1, but he refused to answer any of her questions. He read the termination letter, gave her a copy of Ms. Meroni's report, and threatened her with police action if she did not leave peaceably. She was denied a copy of Mr. Leek's report, who then escorted her from the premises while her staff was held in a conference room to avoid any contact with her.

552 The employer cannot be allowed to operate that way; there is no possibility

of the fairness required for good labour relations. It must pay the grievor significant damages. She submitted that in addition to damages for normal distress and hurt feelings, she should be compensated for mental distress, even in the absence of psychological evidence (see *Keays v. Honda Canada Inc.*, 2008 SCC 39 at paras. 56 and 57; *Canada (Attorney General) v. Tipple*, 2011 FC 762 at paras. 60 and 111; and *Lau v. Royal Bank of Canada*, 2017 BCCA 253 at paras. 46 and 47).

553 The grievor also sought punitive damages as part of her request in the grievance to be made whole, which was not new to the employer; it was raised in her opening statement. Damages of this nature were awarded in *Lau*; *Galea v. Wal-Mart Canada Corporation*, 2017 ONSC 245; *Mattalah v. Treasury Board (Department of Foreign Affairs, Trade and Development)*, 2018 FPSLREB 13; and *Canada (Attorney General) v. Robitaille*, 2011 FC 1218. In *Robitaille*, the employer's malice was an independent actionable wrong to the ground cited in the grievance (see *Robitaille v. Deputy Head (Department of Transport*), 2010 PSLRB 70 at para. 344). Therefore, even if the termination is upheld, the grievor's claim for damages should be awarded, given the reprehensible way the employer treated her.

554 Reinstatement is the appropriate remedy because of the grievor's employment record. The misconduct she admitted to was minor and out of character. The members of her team all testified that they would welcome her back; even Mr. Russell testified that he was saddened by her termination. Mr. Goluza described her as a talented resource and a dedicated public servant. There is no reason that the presumption in favour of reinstatement should not be applied in this case (see *Lâm*; *Bahniuk v. Canada Revenue Agency*, 2012 PSLRB 107 at para. 356; *Matthews v. Deputy Head (Correctional Service of Canada)*, 2016 PSLREB 38 at para. 170; and *Bahniuk v. Canada (Attorney General)*, 2016 FCA 127 at para. 7).

VI. Reasons

555 This is a case with many strings that must be tied together to reach a conclusion. I will deal with each section in the way the evidence has been laid out, and within each section, I will attempt to address each string.

556 After 7 weeks of hearing (6 of which were dedicated to the evidence of 20 witnesses, including the grievor, and the 1 remaining week was for arguments) followed by the written submissions process, I am left wondering how an otherwise simple discipline case became so convoluted. I believe that the answer lies in two

diametrically opposed versions of the facts.

557 Overall, the employer's proffered version is preferable to me as the decision maker. It is supported by the evidence of witnesses, contemporaneous notes, policy, and investigative reports conducted by both internal and external investigators, and it is more credible than the grievor's version. The employer admitted that in its version, there are errors and shades of gray. On the other hand, at no point did the grievor concede to any version of the events other than her strictly black-and-white one, even when her documents did not strictly support what she would have the Board believe.

558 The grievor presented as a highly emotional witness who lacked any objectivity, let alone any insight into the impact of her actions on her career or on others, particularly Mr. Russell and indeed Mr. Brochez and sadly Mr. Fraser, who did not live to see the end of this process. Sadly, her lack of insight had a devastating effect on her career.

A. <u>The grievance</u>

559 The grievor alleged that her employment with the employer was terminated without cause. She strictly denied harassing Mr. Russell, and with only very minor exceptions, which she admitted at the hearing, she strictly denied any wrongdoing related to the misconduct allegations.

560 I will first deal with whether the grievor harassed Mr. Russell. The first question to be answered is whether she committed the acts he complained of, which were the old boys' club comment, the shotgun practice incident, the swift-water rescue training course incident, and the project management course incident. There is no doubt in my mind that each incident occurred, including the old boys' club comment, which the grievor specifically denied making.

561 Mr. Russell was overall a very sympathetic witness. His answers were direct, although not always pleasant. His evidence was corroborated overall by the evidence of the witnesses called on the grievor's behalf. On the other hand, her evidence consisted of the complete and utter denial of any responsibility or any recognition that her actions were anything other than authorized as part of her role as Mr. Russell's manager or that he might have perceived them as offensive.

562 Mr. Brochez described the grievor as someone he did not want to be on the wrong side of, and I have no doubt that there lies the root of the problem between Mr. Russell and the grievor. While her actions with respect to the shotgun practice, the swift-water rescue training course, and the project management course might have been within the scope of her managerial duties, it was how she pursued them, the lack of consultation with Mr. Russell, and the my-way-or-the-highway approach to managing a senior officer that were offensive to him.

563 Her lack of respect for his seniority and service and Mr. Russell's determination not to be managed were the root cause of their difficulties. All her employees who testified on her behalf, and Mr. Goluza, described her as driven. She was given the task of managing Mr. Russell and Mr. Fraser, both of whom were senior officers with many years in the workplace, set in their ways, and difficult to manage. The hard-and-fast inflexible approach that she took to managing the workload and the workplace described by the witnesses made managing these two employees difficult.

564 Rather than alter her approach and find one that worked, the grievor persisted to the point that she became the subject of a harassment complaint as a result of her strict adherence to rules and policy and her inflexibility when it came to managing Mr. Russell in particular. The harassment allegations for which she was disciplined taken individually are very minor, but taken as a package, their impact on Mr. Russell was in my opinion akin to a form of water torture. Each minor incident ate away at Mr. Russell and further alienated him from his coworkers and his team, including the grievor as his team leader, according to his evidence.

565 There is very little discrepancy between the stories told by Mr. Russell and the grievor. Both are essentially corroborated in emails and by Mr. Brochez and Mr. Russell. I chose not to consider Mr. Leeden's testimony, as I found him not a credible witness since in my estimation, his actions in the course of the events that unfolded during the period covered by this grievance were self-serving and were aimed at achieving his goal of securing a position in the employer's Nanaimo office. His role in reporting Mr. Russell's behaviours and actions to the grievor added fuel to a fire that needed none.

566 I find as a fact based on the testimonies of Mr. Russell, Mr. Fraser, and Mr. Brochez that in a meeting two years before the filing of the harassment complaint, while discussing the staffing accommodation requirements of the Nanaimo office, the grievor, in response to an inquiry from Mr. Russell about hiring someone he knew from

the provincial conservation service, responded to him in front of his teammates that any hiring would be done through an open process and not through some old boys' network or back-room deal. I also find as a fact that the grievor knew that it was not true and that the effect of this comment was to embarrass Mr. Russell in front of his colleagues and to cast a disparaging light on how he had managed to be hired into his position in the Nanaimo office. On its own, this incident should not have been considered as part of a harassment allegation as it was outside the normally accepted one-year time limit to make allegations. However, since it was part of an ongoing pattern of behaviour demonstrated by the grievor, I have accepted it.

567 As for the second harassment allegation, the evidence is mostly from the grievor and Mr. Goluza. She testified that she denied Mr. Russell the right to participate in the shotgun practice based on advice she received from the training coordinator and based on the employer's policy that required anyone participating in shotgun practices to have an up-to-date firearms safety certification.

568 Mr. Goluza's version of the events was very convincing and was supported by a series of emails that showed that the grievor was upset that the employer had overruled her in her pursuit of a fitness-to-work evaluation for Mr. Russell. She had sent a letter to his physician with 10 questions to be answered before she would allow him to participate in the shotgun practice. When his doctor responded in a letter with a one-line answer, according to Mr. Goluza, she became angry. She was even more upset that Mr. Goluza and Labour Relations were satisfied with the letter. Only then did she raise the policy requirement of the certification, according to Mr. Goluza.

569 The evidence of Mr. Bell was very instructive on this topic. He had previously been responsible for training and certifying officers in the use of firearms. According to him, it was up to the regional director, in this case Mr. Goluza, and the officers' manager, the grievor, to ensure that officers were given the opportunity to practice their firearms use to ensure that they would pass the refresher course when it was offered. Mr. Bell was not aware of any provision that prohibited a lapsed officer from attending firearms practices. According to his evidence, contrary to that of the grievor's, the restrictions on firearms use is in an operational and not in a training context. For practice purposes, officers are allowed, and indeed it is necessary for them, to use the firearms to pass the refresher.

570 The only reason I can conclude then that the grievor withheld her permission for Mr. Russell to participate in the firearms practice was her determination

to have her own way with respect to the fitness-to-work evaluation, which she could not make happen when it came to the doctor's letter. Her rigid application of the policy should have been first and foremost in her mind during this time if it was her primary reason for denying Mr. Russell his right to participate in the shotgun practice.

571 However, from an examination of the email traffic submitted as exhibits, it was not. Her focus was clearly on securing an answer to each and every question in her letter from a physician she deemed suitable. She was annoyed and disappointed with the stand taken by Mr. Goluza and Labour Relations, and that annoyance found its outlet in denying Mr. Russell the opportunity to participate with the rest of his team in the shotgun practice, further isolating him.

572 While the grievor's representative might have been accurate in saying that the grievor had a good reason to refuse to allow Mr. Russell to participate in the shotgun practice, which based on Mr. Bell's evidence he was not, in my assessment, he is incorrect that the issue before me is not whether the grievor accepted Mr. Russell's doctor's note. The question is whether in dealing with granting permission to attend the shotgun practice, she acted in a way towards him that constituted harassment within the definition of the policy.

573 The issue surrounding the medical note is how the grievor reacted to not being able to secure the information about Mr. Russell in the format she deemed appropriate. Her reactions and her behaviours at the time are indicative of a pattern of behaviour towards him, and indeed towards the employer, in which she asserted her managerial rights and took a my-way-or-the-highway stand. She simply could have said from the outset that the policy precluded him from participating, which according to Mr. Bell, would not have necessarily been so. Instead, she set out to secure medical proof that confirmed her assessment that Mr. Russell was not mentally fit to participate in armed exercises or to be in the workplace.

574 She acted in a way that any competent manager ought to have known would upset an employee who had complied with her direction only to be told that it was not sufficient. When provided with a succinct response that did not confirm her opinion, she insisted that the doctor was not able to assess Mr. Russell because he was from a walk-in clinic, which was not true, and that he had not answered each and every question, which having examined the response, he clearly did.

575 The grievor's explanation of how Mr. Russell came to be rescheduled for the swift-water rescue training course is incomprehensible. It was that she was to contact the training provider about rescheduling the training and that of its own accord, it had rescheduled it and had sent the following email to Mr. Russell: "They said they would email confirmation if a switch was possible from the Chilliwack course to Nanaimo which it is" (Exhibit 5, tab 19). Other than information concerning cancellation and logistics, the confirmation that was sent only stated that the training had been rescheduled (Exhibit 5, tab 18).

576 Obviously, the service provider had been asked to reschedule the course; why else would it have done so? The grievor did it without consulting Mr. Russell in the course of the exercise of her managerial duties. Normally, this would be inoffensive or an oversight, but to someone who is already feeling marginalized and isolated and who has already been the subject of previous incidents of offensive behaviour, such treatment is offensive.

577 Finally and even more incomprehensible was how the grievor dealt with the project management course that Mr. Russell asked to reschedule. By then, their relationship was already known to be shaky, and he had told her that he felt raped by her. This would have been an easy opportunity for her to make inroads in improving that relationship. Instead, she again dug in her heels and insisted that he do it her way. To what end? There was nothing to be gained. Only when he indicated to her that he felt that she was trying to get rid of him did alarm bells go off about how she was dealing with the matter. Even then, instead of simply agreeing to the change, she advised him that she needed to consult Labour Relations before responding to him, which needlessly escalated the matter.

578 Common sense should have told her that the simple answer to his request would have been to grant it, particularly if she was intent on saving the employer costs, as she had indicated when rescheduling the swift-water rescue training course. Even though her answer was technically correct, it did nothing to help the relationship. A simple approval would have done, but instead, she responded with a lengthy policy-laden response, to assert her managerial position. In my estimation, the sole purpose of it was to assert her authority as his manager.

579 One question remains, even with these findings of fact. Do these four incidents meet the definition of harassment? "Harassment" is defined in the Treasury Board's "Policy on Harassment Prevention and Resolution" as follows:

…

> *… improper conduct by an individual, that is directed at and offensive to another individual in the workplace, including at any event or any location related to work, and that the individual knew or ought reasonably to have known would cause offence or harm. It comprises objectionable act(s), comment(s) or display(s) that demean, belittle, or cause personal humiliation or embarrassment, and any act of intimidation or threat….*

…

580 Harassment may be a single act, a series of acts, or a pattern of behaviour. In this case, through her managerial style, the grievor demonstrated a pattern of behaviour that according to Mr. Russell demeaned him, caused him personal humiliation, and isolated him from his team members. The type of behaviour she demonstrated is best classified as an abuse of authority. She repeatedly targeted him and singled him out for differential treatment in the workplace that according to his evidence (which I believe), caused him to feel demeaned.

581 Therefore, I accept the employer's conclusions that the grievor harassed Mr. Russell, which was worthy of discipline. However, on the scale of harassment, this is a relatively minor case that on its own would not have warranted terminating a manager with 22 years of service. It warranted other discipline, even perhaps a demotion, but termination for this alone would have been excessive. However, I am mindful of the findings in *CHEO*, in which the adjudicator ruled that reinstatement was not an option for the grievor, who was found guilty of harassment (see *CHEO*, at paras. 129 to 131).

582 However, she was not merely disciplined for harassing Mr. Russell. She was also disciplined for acts of misconduct for which she continued to deny any culpability, up to her testimony. Even then, she accepted responsibility only for the least offensive of the allegations against her and even then, only on a qualified basis.

583 There is no doubt in my mind that the grievor set out on a course of events aimed at accomplishing her own goals that during the period at issue were primarily proving Mr. Russell unfit to be in the workplace and being vindicated of any harassment allegations. In the course of her efforts, she demonstrated certain behaviours that were very disruptive to the workplace; a prime example was telling Mr. Brochez about Mr. Russell's ATIP request. She was not disciplined for this, but I think it is worthy to note as it is an example of the disruptive influence she had on her team. An example of how disruptive she was within the management team was her communication with Ms.

Portman over the uniform issue when she put her on email mute and according to her evidence threatened to send her Barbie clothes as an outfit option for the officers to wear when serving warrants.

584 The employer's conclusion that the grievor committed the offences listed in the termination letter is supported by the evidence. The excuses she proffered are at best weak and at the least, unbelievable.

585 I believe that she did in fact speak to Mr. Fraser about his testimony to the Harassment Investigator because it happened at a very important time for him, during his return-to-work planning session after a lengthy illness. This incident was significant enough to him that he reported it very shortly after it happened. This was not a matter of a lengthy passage of time during which his previous medical condition might have interfered with his memory. Nothing in his testimony about this event led me to question his recall.

586 In her evidence, the grievor offered nothing more than a strict denial of the allegation and a reliance on Mr. Fraser's illness to convince me that the comment was not made. I find that on the balance of probabilities, she did in fact violate the confidentiality of the harassment investigation process. Those actions were worthy of discipline, and delaying that discipline until the process ended in my opinion was not untoward, particularly since Mr. Fraser reported what he did in February 2015, the final harassment investigation report was released in mid-April 2015, and the misconduct investigation was launched within a month of that release.

587 There is no doubt that the grievor took managerial actions with respect to Mr. Russell at a time when she was separated from him and no longer his manager. She admitted to it. She also admitted to Mr. Goluza that she would do anything necessary to be safe.

588 Instead of asking the employer or Mr. Krahn, Mr. Russell's manager, the grievor took matters into her own hands; she deliberately misled Ms. Carrière and demanded that Mr. Russell's access to the Burrard Street offices be suspended. She sent Ms. Carrière a request from her work email using her official signature, hoping that Ms. Carrière would accept that she had the authority to make the request, which she did not have. This was not only a violation of the separation of the parties due to the harassment complaint, but in my opinion, it was also deceitful, insubordinate, and disrespectful of Ms. Carrière and her position. At the hearing, the grievor refused to

recognize that her actions had been wrong; she justified them as a means of protecting herself.

589 Furthermore, the grievor readily admitted to accessing Mr. Russell's PeopleSoft records at least twice when she was not his manager. While Mr. Goluza did not correct her the first time, when it recurred, disciplinary action was imposed. What is more astonishing about this offence is not only that she readily admitted to violating the employer's records for personal use, it also clearly demonstrated that she has no qualms about taking whatever steps she thinks are necessary to get her own way. Even though Mr. Goluza did not discipline her immediately when she accessed PeopleSoft in January, the grievor admitted that she was aware that such access was not to be for her personal use. As a manager and peace officer held to a higher standard with respect to abiding by rules, regulations, and policy, she knew that her actions were wrong. Therefore, discipline was the consequence.

590 She also admitted that her actions were disrespectful towards both Mr. Goluza and Mr. Gilliéron. But again, her testimony was intended to minimize the impact of her actions. This was initially only one item of misconduct, but it was later amended to add the allegations about her actions at the regional management team meeting and the allegations she made about Mr. Goluza.

591 The grievor admitted that she put an inappropriate out-of-office response on her email, but she attempted to minimize it by stating that it had no impact on the employer. She also admitted that she initiated a fact-finding investigation into a conflict between Mr. Russell and another Nanaimo employee despite both the separation arrangements and Mr. Goluza's specific directions not to undertake any such fact finding, explaining to her that she did not want to run afoul of the harassment prevention policy again. She did not express true remorse for her actions.

592 The grievor's version of the events at the regional management team meeting differed significantly from those of the others in attendance and amounted to nothing more than a mere denial of any responsibility for the embarrassment she caused Mr. Goluza and the potential for damage to his career that might have resulted had her comments been taken seriously. She denied stating that Mr. Goluza had interfered with the threat-risk assessment by trying to keep one of Ms. Portman's officers from being interviewed.

593 The version of the events from the others who testified about it was

essentially the same. The grievor testified that she merely updated Ms. Portman and that Mr. Goluza shot her a nasty look. Her defence that she "alleged it as a rumour" is just not credible. For one thing, how does someone do that? Another is the evidence of the others in attendance, who confirmed that she in fact made a direct allegation against Mr. Goluza. No one other than the grievor mentioned an apology. I found Mr. Goluza a very credible witness and believe that if he had received an apology, he would have mentioned it in his testimony.

594 In total, 20 witnesses testified before me at the hearing. The grievor made much of the weight to be put on Mr. Fraser's evidence because of his illness. There were gaps in his evidence, and when others' evidence corroborated those gaps, I accepted it. I ignored other parts, for example, dealing with his presence at the conversation about the workplace shooting.

595 I found both Mr. Russell and Mr. Brochez highly credible. Neither obfuscated his answers or tried to deflect his involvement in any of the events. On the other hand, Mr. Leeden's evidence has been disregarded as he had a personal interest in the outcome of these events and acted to some extent as an agent provocateur by reporting Mr. Russell's actions to the grievor. He was her spy in the Nanaimo office. The other enforcement officers who worked for her confirmed much of what Mr. Brochez said about her. If an employee was good, she would get along well with that person; she liked to control the work, and no one wanted to be on her bad side.

596 The employer's witnesses, Ms. Meroni and Mr. Owen, were less clear with their recall on cross-examination than on direct examination, but that is not an unusual situation in these types of events. The main question that goes to their credibility is when they reached their conclusions. When did Ms. Meroni conclude that the grievor was culpable of misconduct? When did Mr. Owen conclude that her employment should be terminated?

597 The grievor would have me believe that Ms. Meroni had concluded the outcome of her investigation when she wrote her preliminary report with its conclusions before interviewing the grievor. That was admittedly an unusual manner of proceeding, but Ms. Meroni explained why she did it — she did not want to forget anything during the delay interviewing the grievor, and the conclusions were based on her impressions at the time, which could have been changed by her interview with the grievor and her review of the materials the grievor submitted at the misconduct investigation meeting. However, I doubt that any consideration was given to the documents the grievor

submitted given the very short time in which Ms. Meroni issued her misconduct investigation report. This part of her testimony was not credible.

598 Mr. Owen gave extensive and thorough evidence about how he came to his conclusions. The grievor called Mr. Saint-Onge to rebut this evidence and to establish that Mr. Owen had concluded that termination was appropriate on August 6, 2015, and had issued those directions to Labour Relations on that date. With due respect to the grievor's representative, that is not what the evidence of Mr. Saint-Onge or Mr. Owen established. Mr. Saint-Onge could not remember if the notes in question (Exhibit 46) were from a meeting with Mr. Owen or if they were from a briefing on hot issues by his team when he started in his role as the director of Labour Relations. This is supported by the fact that Mr. Owen was on vacation from July 20 to August 14, 2015 (Exhibit 50). Mr. Saint-Onge also admitted that he thought he spoke to Mr. Owen on August 6 but that it could have been on August 17.

599 I do not find anything nefarious in the preparation of the termination letter in advance of the grievor's meeting with Mr. Owen. He admitted that that outcome had been likely, particularly since he doubted that the employer could ever trust her again. Mr. Saint-Onge explained the purpose of preparing a discipline file for termination as being, in my words, "preparing for the worst and hoping for the best." The discipline letter could always have been changed to a lesser type of discipline, but termination letters take much more preparation, and levels of approval had to be consulted in advance for the employer to proceed on the arranged date. With approval for a higher level of discipline, a lesser level was impliedly also approved. I accept this explanation as to why the termination letter was prepared before the meeting with the grievor. It does not in any way negate Mr. Owen's credibility.

600 Given the nature of the harassment allegations, minor or not, given that the grievor has openly and in writing stated that she will do anything to keep herself safe, and given that she had repeatedly demonstrated her insubordination and disrespect for the employer and its management team, the employer is justified in its lack of trust in her.

601 This might have been an isolated incident in the grievor's career, which, given the totality of the evidence, I do not believe. The lack of judgement and disrespect she showed for her employee, her colleagues, her manager, and her employer is unacceptable of a manager of her level. I have no doubt that it would reoccur were she reinstated and presented with a circumstance in which she felt she had to assert her

rights, particularly in light of the threats she made to the employer, such as those in her email of December 28, 2014 (Exhibit 9), in which she threatens that the path she is on will leave the employer with a black eye, and such as the comments she made to Mr. Goluza in her discussions with him on February 12, 2015. In that discussion (summarized in Exhibit 5, tab 28), she threatened among other things that she could continue to be a good and motivated employee or she could turn into a difficult employee who would cause the department embarrassment. This is not an employee who warrants the employer's trust.

602 The employer's *Code of Values and Ethics* (Exhibit 6, tab 76) requires its employees to treat all people with respect, dignity, and fairness in a workplace that is free from harassment. Its employees are to work together in a spirit of openness, honesty, and transparency that encourages engagement, collaboration, and respectful communication. The grievor failed at that and failed to act with the integrity and excellence demanded by the *Code.*

603 Integrity is defined by the department in part as acting at all times in a manner that bears the closest public scrutiny. The grievor was not to use her official role to obtain an advantage for herself or to disadvantage someone else, such as Mr. Russell. She was not to act in a manner that would cause her to lose the employer's trust. She clearly failed to meet the standard of excellence of fostering a work environment that promoted teamwork, learning, and innovation; instead, she created a team in which she promoted isolating Mr. Russell.

604 Furthermore, as a peace officer, she was obligated under the "Officer Conduct Directive" (Exhibit 6, tab 77) to conduct herself in a manner that demonstrated that she was worthy of the trust and confidence of both the department and the public. Her lack of recognition or accountability for her actions flies in the face of this obligation. In her evidence, Ms. Meroni testified that the grievor showed no remorse, no contrition, and no possibility of rehabilitation. I agree. As a peace officer and the manager of junior peace officers, she was expected to act with the greatest of honesty and integrity. She did not. She can no longer be trusted to follow the rules.

605 The grievor's lack of remorse, clearly demonstrated throughout the process, including at the adjudication hearing, cannot be ignored. She repeatedly denied any wrongdoing and has shown no insight into her actions and into how they contributed to her circumstances. As in *Stewart*, as a peace officer, she was expected to follow orders, to act in the best interests of Canadians, and to act at all times with

integrity and honesty.

606 Like in *Charinos*, given the aggravating and mitigating factors, including the repetitive nature of the offences and the defiance demonstrated by the grievor throughout the process, the employer has demonstrated that termination was within the realm of reasonable discipline and that it should not be tinkered with.

607 For these reasons, I believe that the employer established that the employer-employee trust relationship has been broken and is no longer viable. The question now is whether the termination that resulted was a reprisal for the exercise of her rights under the *CLC*.

B. <u>The complaint</u>

608 The grievor alleged that the employer disciplined her as an act of reprisal for her demanding that it provide her with a violence-free workplace. Many days of the hearing were spent exploring whether Mr. Russell had posed a threat to her safety and whether she had a legitimate fear of him. Mr. Leek's investigation was examined in minute detail, along with his conclusions that Mr. Russell committed an act of workplace violence unrelated to the grievor.

609 It is not my role to determine whether the grievor was in an unsafe workplace or whether she had a legitimate fear for her safety, even though much of her evidence was targeted at that point. My role is to determine whether any acts of reprisal occurred and, if so, whether they were a direct consequence of exercising her rights under the *CLC*, which would have violated that Act.

610 The relevant sections of the *CLC* are 133 and 147, and s. 133(1) provides as follows:

> ***133 (1)*** *An employee, or a person designated by the employee for the purpose, who alleges that an employer has taken action against the employee in contravention of section 147 may, subject to subsection (3), make a complaint in writing to the Board of the alleged contravention.*

611 Section 147 of the *CLC* states as follows:

> ***147*** *No employer shall dismiss, suspend, lay off or demote an employee, impose a financial or other penalty on an employee, or refuse to pay an employee remuneration in respect of any period that the employee would, but for the exercise of the employee's rights under this Part, have worked, or take any*

> *disciplinary action against or threaten to take any such action against an employee because the employee*
>
> ***(a)** has testified or is about to testify in a proceeding taken or an inquiry held under this Part;*
>
> ***(b)** has provided information to a person engaged in the performance of duties under this Part regarding the conditions of work affecting the health or safety of the employee or of any other employee of the employer; or*
>
> ***(c)** has acted in accordance with this Part or has sought the enforcement of any of the provisions of this Part.*

612 Section 133(6) of the *CLC* is also relevant because it provides that once an employee has established that he or she filed a complaint under s. 133(1) in respect of the exercise of the right to refuse to perform work under ss. 128 or 129, the burden of proof shifts to the employer to show that s. 147 was not contravened (see *White*, at para. 141). That section reads as follows:

> ***133 (6)** A complaint made under this section in respect of the exercise of a right under section 128 or 129 is itself evidence that the contravention actually occurred and, if a party to the complaint proceedings alleges that the contravention did not occur, the burden of proof is on that party.*

613 As the parties argued, the test to establish a violation of the *CLC* is set out in *Vallée*. The grievor had to demonstrate that she exercised her rights under Part II of the *CLC*, that she suffered reprisals, that the reprisals were disciplinary, and that there was a direct link between the exercise of her rights and the actions taken against her. In this case, there was no link between the disciplinary action and the exercise of her rights under Part II.

614 The employer bears the burden of proving that a contravention of s. 147 of the *CLC* did not occur. Its burden of proof is discharged if it can establish any one of the following: that the grievor did not act in accordance with s. 128, that the grievor was not disciplined, or if the grievor was disciplined, that it was not in any way related to the exercise of his or her rights under s. 128 (see *White*, at para. 142).

615 The employer contested the existence of a link between the discipline imposed and the exercise of the grievor's rights under s. 128 of the *CLC*.

616 From the types of reprisals listed in s. 147, the grievor really alleged only that she had been disciplined for having demanded that her employer provide her with

a safe workplace. To determine that a disciplinary reprisal took place, there must be a link between the exercise of the grievor's rights under Part II of the *CLC* and the disciplinary action taken by the employer (see *Gaskin v. Canada Revenue Agency*, 2008 PSLRB 96 at para. 62; *Tanguay v. Statistical Survey Operations*, 2005 PSLRB 43 at para. 14; *Vallée*, at para. 64; and *Martin-Ivie*).

617 As proof of the employer's violation of s. 147, the grievor pointed to two of the misconduct allegations that Ms. Meroni investigated, which were the confidentiality breach and the grievor's access of the PeopleSoft records, both of which occurred before the employer received a letter from the grievor's legal counsel demanding that the employer provide her with a safe workplace.

618 According to the grievor, the decision to investigate her was clearly retribution. The employer did not care about the PeopleSoft access when she had done it before. Only after Mr. Korbin's April 3, 2015, letter did Ms. Meroni ask Mr. Goluza to advise the grievor that her access was unacceptable. Likewise, the employer did nothing about the February 27, 2015, confidentiality breach until after it received Mr. Korbin's letter. Coincidentally, this was the first misconduct investigation that Ms. Meroni conducted and the first letter she had received related to the *CLC*.

619 Missing in the grievor's theory of the events is that the harassment investigation was still ongoing when the confidentiality breach was uncovered and that it did not conclude until after Mr. Korbin's letter was delivered to the employer. The discipline for that breach quickly followed the Investigator's presentation of the final report to the employer and her report of the breach. Likewise, Ms. Meroni's evidence was that the first time she heard of the grievor accessing the PeopleSoft records occurred very shortly after Mr. Korbin's letter was delivered. She directed Mr. Goluza to direct the grievor to stop. The two incidents of misconduct and Mr. Korbin's letter are unrelated.

620 The grievor violated the employer's policy on accessing employee records after Mr. Korbin sent his letter. The mere contemporaneous nature of safety and misconduct issues does not prevent an employer from taking action. An employee cannot use his or her rights under the *CLC* as a shield to inoculate otherwise reprehensible behaviour from attracting discipline (see *Aker*, at para. 38; and *Martin-Ivie*, at para. 59).

621 If the essential nexus does not exist between the *CLC* rights and the discipline, the analysis under s.133 stops. An employer may take disciplinary action for

a good reason, a debatable reason, or no reason at all, as long as there is no violation of the *CLC* (see *Ouimet*, [2002] CIRB No. 171 (QL) at para. 56). A short time between discipline and the exercise of *CLC* rights is not enough to establish a nexus (see *Vallée*, at para. 71). In this case, the grievor relied entirely on the timeline between events to establish a nexus, which was insufficient to discharge her onus.

622 The exercise of one's rights under the *CLC* is not a shield against inappropriate workplace behaviour. The protection against reprisal does not cover unrelated misconduct. The question is whether there is a nexus between the discipline and the exercise of rights under Part II of the *CLC*. The exercise of rights under s. 128 of the *CLC* must be the proximate cause of the discipline imposed (see *Martin-Ivie*). It is not enough to show that discipline occurred; the grievor must also show that a nexus exists between the discipline and the exercise of rights under s. 128 (see *Paquet*), which she has not done.

C. Procedural fairness

623 The grievor argued that even if her actions were worthy of discipline, the employer breached her rights to procedural fairness, and because of that, no discipline should be imposed. I asked for written submissions on the impact of a breach of procedural fairness on the outcome of disciplinary action. Rather than address the question, the grievor chose to take that opportunity to reopen her argument and allege that the employer had breached the collective agreement by adding an additional ground for termination, which is that she made claims of being afraid of Mr. Russell when she was not in fact afraid, of which she was not advised.

624 The employer argued that this was a breach of the principle in *Burchill* as it was not raised during the grievance process. While I would have thought that it could have been anticipated that the bargaining agent would raise a breach of the collective agreement as part of its argument during the grievance process, or at the least during the adjudication hearing, it did not, and it was inappropriate for it to be raised later. Even if it were appropriate, I would not have accepted the argument that the employer added a new ground. Mr. Owen's musings on whether the grievor made a true claim of being afraid were part of his deliberations on trust, which was clearly identified as a ground for the termination.

625 Furthermore, the employer established that the grievor is guilty of blameworthy conduct, disloyalty to the employer, and blind determination to vindicate

herself, similar to the situation in the *IMTT-Québec* case. She has not proven any dishonesty of purpose on the part of the employer; in fact, her motives throughout are in question. The content of the termination letter was fulsome and clear and met the requirements of clause 17.01 of the collective agreement.

626 As for the duty of honest performance, which the grievor would have me introduce into the employment relationship, if it exists, it does so within the collective bargaining process between the parties to the collective agreement. There has been no breach of the collective agreement, so I fail to see how that duty has been breached.

627 It is trite law that hearings before an adjudicator are *de novo* hearings and that any prejudice or unfairness that a procedural defect might have caused are cured by the adjudication of the grievance (see *Maas*, at para. 118; *Pajic*; and *Tipple*, at 2). Any errors that Ms. Meroni made in her investigation were corrected by the lengthy hearing before the Board, during which the grievor had full opportunity to examine the case against her, to cross-examine the employer's witnesses, and to present her evidence.

D. Remedy

628 The grievor's conduct was worthy of discipline. I am mindful of the fact that she had a lengthy career with no disciplinary record. While this may be a mitigating factor in some instances, it is not always so. There are times when the wrongful deed is such that only an extreme penalty is warranted to meet the goals of disciplinary action and to send the message to others that this type of conduct will not be tolerated.

629 The grievor has been described as an excellent officer with outstanding investigative skills, which I am certain was a great loss to the employer. However, I am also mindful that the employer has lost all faith and trust in her and that her manager and colleagues have testified that they cannot work with her again. Mr. Russell testified that he cannot work with her again. When asked whether she felt she could be reinstated, the grievor demonstrated a remarkable lack of insight into the impact of her actions on the workplace. She was convinced that she could regain a working relationship with Mr. Goluza and assumed that she would resume her role managing the Vancouver and Nanaimo offices, with Mr. Russell on her team. This is actually quite astonishing given the evidence that the Board has heard.

630 I have considered all the factors and arguments that the parties put to me in support of their stands on the question of the discipline imposed. *Cooper v. Deputy Head (Correctional Service of Canada)*, 2013 PSLRB 119, is often cited in support of the

argument that an adjudicator should not interfere with a disciplinary penalty unless it is unreasonable or wrong (see paragraph 13 of that case). Other decisions state that the penalty should be overturned only if it is excessive (see *Iammarrone v. Canada Revenue Agency*, 2016 PSLREB 20; and *Rahim*). Still in other cases, adjudicators have determined that penalties should not be overturned if they were justified (see *McNulty v. Canada Revenue Agency*, 2016 PSLREB 105).

631 Essentially, in my opinion, these cases all stand for the same principle, which is that any disciplinary penalty imposed by the employer against an employee must be warranted in the circumstances, must consider all the aggravating and mitigating factors, and must be reasonable. A reasonable penalty is not excessive. In light of the evidence before me, I find that the termination of the grievor's employment was not excessive and that it was reasonable in the circumstances.

632 Counsel for the grievor argued that 22 years of service cannot be destroyed by a momentary lapse in judgement, which this was not. This was a case of an ongoing pattern of behaviour demonstrated by a manager against one of her employees and her employer. It was a case of a manager who was insubordinate and who violated the employer's *Code of Values and Ethics* and *Officers Code of Conduct*, both of which she had sworn to uphold.

633 Unlike the situation in *Matthews*, in this case, no one representing the employer was of the opinion that the employment relationship could be saved. When trust in the employee has been destroyed and is not capable of restoration, regardless of the existence of mitigating circumstances, the employment relationship must end. Consequently, I do not believe that the employer was unreasonable or wrong in its determination that termination was appropriate in the circumstances. Nor do I believe that termination was excessive in the circumstances.

634 Many arguments were made other than those discussed, as is evident from the extensive report of the arguments noted in this decision. Both sides submitted case law in support of these arguments. Given the true nature of the case before me, I have not addressed each individually; rather, I have referred to those that directly address the true nature of the dispute between the parties.

635 For all of the above reasons, the Board makes the following order:

(The Order appears on the next page)

VII. Order

636 The grievance is dismissed.

637 The complaint is dismissed.

September 28, 2018.

Margaret T.A. Shannon,
a panel of the Federal Public Sector
Labour Relations and Employment Board