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



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

BETWEEN

DANIEL ELLIOT

Grievor

and

**DEPUTY HEAD
(Correctional Service of Canada)**

Respondent

Indexed as

Elliot v. Deputy Head (Correctional Service of Canada)

In the matter of an individual grievance referred to adjudication

Before: Bryan R. Gray, a panel of the Federal Public Sector Labour Relations and
Employment Board

For the Grievor: Himself

For the Respondent: Joel Stelpstra, Treasury Board

Heard at Abbotsford, British Columbia,
December 19 to 22, 2017.

REASONS FOR DECISION

I. Summary

1 Canadian taxpayers owe a debt of gratitude to Daniel Elliot (“the grievor”) for the diligent manner in which he embraced his duties as the comptroller for the Correctional Service of Canada (“the employer” or CSC) in its Pacific Region to ensure the prudent management of public funds.

2 Mr. Elliot took his duties very seriously. Over a period of several years, he became increasingly concerned about what, in his opinion, was less-than-ideal fiscal management in his region and across the employer nationally.

3 After a series of contributing events, the grievor’s frustration and anxiety became problematic for his health as he had formed the opinion that his superiors were compromising and usurping his professional ethical obligations and statutory duties. Upon reaching this conclusion, he went on sick leave. Shortly after that, on February 1, 2017, he filed a grievance alleging that a reprisal was made against him and that his manager usurped his authority, which thus amounted to a constructive dismissal. The grievor then wrote to his employer on March 9, 2017 to give notice of his resignation effective at the end of the day on April 20, 2017.

4 The grievance was referred to adjudication under s. 209(1)(c)(i) of the *Federal Public Sector Labour Relations Act*. That section applies to a demotion or termination of an employee in the core public administration under s. 12(1)(d) of the *Financial Administration Act* (R.S.C., 1985, c. F-11; *FAA*) for unsatisfactory performance or under s. 12(1)(e) for any other reason that does not relate to a breach of discipline or misconduct.

5 Both parties presented interlocutory motions; mainly, with respect to the referral of the grievance to adjudication. I chose to consider the preliminary objections, or at least those I found necessary, in my decision so that I could benefit from understanding the evidence that could potentially provide a helpful context within which to rule on those objections. Counsel for the employer very reasonably chose not to present oral arguments on all the preliminary objections.

6 In considering this grievance, I must determine on the evidence before me if in fact the grievor's duties and responsibilities were usurped such that I should find that he was constructively dismissed. And if I do reach that conclusion, I must then determine if such a wrongful dismissal claim is even possible in the context of a federal public servant who held an appointment pursuant to statutory and collective agreement authorities.

7 Principal among the preliminary objections was the employer's opposition to the referral of a claim of constructive dismissal to adjudication. After a careful review of all the relevant evidence, authorities, and arguments, I conclude that the evidence does not support a finding of constructive dismissal. Given that, I need not go further to determine the legal question of whether it was even possible for the grievor to claim constructive dismissal under the authorities he was subject to as a federal public servant.

II. Background

8 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*, the *Public Service Labour Relations Act*, and the *Public Service Labour Relations Regulations* to, respectively, the Federal Public Sector Labour Relations and Employment Board ("the Board"), the *Federal Public Sector Labour Relations and Employment Board Act*, the *Federal Public Sector Labour Relations Act* ("the Act"), and the *Federal Public Sector Labour Relations Regulations* ("the Regulations").

9 The grievor held a regional comptroller position (classified FI-04). He enjoyed 24 years in the public service plus an earlier 5 years of service in the Canadian Armed Forces. With very few exceptions, which shall be examined later in this decision, he received positive performance assessments (PAs). He also received accolades for his diligence and tenacity in his efforts to provide service excellence and safeguard public funds, as was noted in an email to him from a retiring senior executive member of the employer.

10 The grievor alleged that a reprisal was made against him and then claimed that his manager usurped his authority, which thus amounted to a constructive dismissal. He stated that his grievance was not answered within the required time, which thus amounted to a rejection of it and allowed him to refer it to adjudication under s. 209(1)(c)(i) of the *Act*. That section applies to a demotion or termination of an employee in the core public administration under s. 12(1)(d) of the *Financial Administration Act* (R.S.C., 1985, c. F-11; *FAA*) for unsatisfactory performance or under s. 12(1)(e) for any other reason that does not relate to a breach of discipline or misconduct.

III. Summary of the evidence

A. The grievor's duties and responsibilities

11 The grievor held a regional comptroller position (classified FI-04). He enjoyed 24 years in the public service plus an earlier 5 years of service in the Canadian Armed Forces. With very few exceptions, which shall be examined later in this decision, he received positive performance assessments (PAs). He also received accolades for his diligence and tenacity in his efforts to provide service excellence and safeguard public funds, as was noted in an email to him from a retiring senior executive member of the employer.

12 The grievor testified as to the many duties of his position and the professional obligations that come with being a chartered professional accountant (CPA).

13 The grievor noted that his regional comptroller (FI-04 was submitted as an exhibit) work description included the following duties as excerpted, in part, from his human resources records:

...

Key Activities

Directs, plans and manages a unit or units responsible for the delivery of regional multi-functional financial and administrative services and advice as well, as related training.

Directs and leads multi-focused, multi-disciplinary project teams, and represents the Region on departmental and inter-departmental committees; participates on the Regional Management Committee on matters linked to financial services.

Directs the development, improvement and implementation of regional procedures, processes, and methodologies; develops strategic financial/business plans and formal reporting documents.

Directs the development, implementation and operation of regional budgetary controls, internal accounting controls and performance measurement criteria.

Provides financial advice and analysis on strategic/business/operational issues and problems.

Provides functional direction on the CSC and Central Agencies financial policy frameworks.

Directs the negotiations pertaining to cost sharing and service agreements and, contracts with external public and private sector clients.

...

Responsibility

Information for the Use of Others

Directs, plans and manages a unit or units responsible for the delivery of regional multi-functional financial and administrative services to clients. This involves directing the region's financial management, planning, budgeting, monitoring, controlling, forecasting and reporting activities, and establishing regional procedures and processes for the control and reporting of such activities according to the Financial Administration Act (FAA), CSC mandate, Corporate objectives and to CSC and Central Agencies policies and acts.

Provides financial and business expertise to regional management to assist them in making decisions related to the development of strategic, business and operational plans for cost-effective and efficient delivery of regional programs and services; and in the operation and maintenance of minor construction of regional institutions and facilities for offenders in the region. Develops multi-disciplinary project proposals for regional management approval and staff implementation

for delivery of projects and services on time and within budget.

...

Directs the development, implementation and operation of regional budgetary controls, internal accounting controls and performance measurement criteria. Provides regional and operational insight and financial and business feedback to Comptroller's Branch financial specialists on financial policies, authorities, procedures, renewed accounting practices, accrual accounting, investment strategies, monitoring and control mechanisms, performance measures, and related training.

...

Provides financial advice and analysis on strategic/business/operational issues and problems. This information is used by management to improve financial management and accountability, to minimize risks and improve operational efficiency. Provides advice to senior management, operational and financial managers, and staff on legislation, policies, procedures and requirements of SCC and Central Agencies related to all aspects of financial administration.

...

Leadership of Human Resources

As the senior financial officer at the regional level, participates on the Regional Management Committee in the identification of major financial/business issues and priorities impacting on the delivery of CSC programs and related accountability to identify the strategic approach, service level requirements as well as develops collaborative operational and resourcing strategies to meet requirements.

...

Money

Planning and controlling: Manages a unit budget. Directs the planning and controlling of the regional budget and re-allocates funds within the budget, which include preparing financial plans, forecasting, and reporting on budgets. Directs the conduct of strategic, risk and/or contingency planning analyses to advise management of options, the sources and availability of resources for the development and control of

the regional budget as well as individual budgets.

...

Spending funds: *Negotiates financial terms of contracts with suppliers, including both cost and payment structure, for maintenance, construction, as well as contracts for goods and services; exercises section 32 and 34 of the FAA to commit, initiates and authorizes the spending of funds; exercises final payment authority pursuant to sections 32 and 33 of the FAA, for regional financial and offenders transactions, including salary and non-salary payments, journal entries and interdepartmental settlements. Has the authority to sign Departmental Bank Account cheques for the region.*

Ensuring Compliance

Assesses compliance with FAA, CSC and Central Agency requirements with the authority to develop and make recommendations to Regional management to correct inconsistencies or anomalies and /or remove or restrict financial signing authority.

Challenges business proposals, develops and makes recommendations that support the business objectives of the Region and the CSC, as well as provides assurance to management and ultimately Parliament that sound financial and business control practices are being developed and implemented across the region.

The work also involves continuous active monitoring; ensuring that financial and accounting transactions and related review activities are conducted in accordance with generally accepted accounting principles and standards, FAA and, prescribe regulations, policies and procedures with the authority to initiate action to ensure compliance, e.g. recover funds. This requires reviewing the results of the corrective measures taken to ensure complete compliance.

Skill

Job Content Knowledge

Comprehensive understanding of Government of Canada

Accounting practices and principles, Generally Accepted Accounting Principles (GAAP), financial theories, standards, guidelines, policies and legislation, financial management practices, methods and techniques in such areas as, financial analysis, statistical sampling, planning, budgeting, forecasting, cost/risk/benefit analysis, performance measurement, and problem solving. This knowledge is required to provide strategic financial advice and recommendations to senior regional management, provide authoritative direction to the work unit or units, and to provide functional direction and services to the institutions, districts and community services. This knowledge is also required to identify and implement financial best practices throughout the region and to act as a bulwark for ensuring the integrity and the probity of the financial information.

Knowledge of Modern comptrollership theories and practices (results information, risk management, control, and ethical practices and values) to develop and implement controls, risk management practices, to integrate financial and non-financial information to improve stewardship of resources and to support management decision-making and reporting requirement.

Advanced analytical skills are required to integrate strategic and operational financial planning/reporting process; provide strategic advice to senior regional management; direct and manage regional resource allocations.

Knowledge of project management methods, techniques and practices, and experience in team building, leadership, group dynamics and problem solving to deliver multi-functional regional financial and administrative services; to manage project risk and, human and financial resources; and to provide functional direction and services to the institutions, districts and community services.

...

Contextual Knowledge

...

Department: *Knowledge of the mandate, strategies, goals and objectives, programs of the CSC to exercise the mandated financial authority for the delivery of multi-functional financial and administrative services and advice to the Region; knowledge of departmental financial policies, directives, practices, procedures and/or contractual agreements with clients to assess whether regional*

initiatives, spending proposal and day-to-day operations comply.

Other Government Departments: Knowledge of the machinery of government, the working of Cabinet Committees, the budget and planning cycle, the federal regulatory process, the decision-making process within government to satisfy comptrollership requirements and to provide advice and recommendations to management. In-depth knowledge of Central agency roles, policies, directives, management practices and emerging trends to provide advice and explanation of changes to managers and staff.

...

Communication

Reading and listening skills are required to capture the intent and requirements of departmental and central agencies policy and guidelines; to provide comments, direction, recommendations and/or advice to regional management and clients; to participate in Program Evaluations, to understand, interpret, assess and react to verbal information when chairing, facilitating or participating in meetings; to direct, plan and manage a unit or multiples units and to identify when participants do not understand training examples.

Speaking and presentation skills are required when representing the region in formal meetings with other departments and other levels of Governments

Speaking skills to provide a diplomatic challenge role to regional managers regarding business proposals as well as provide financial advice and expertise to management and explain the financial risks and benefits associated with contracts, and program/policy/ legislative proposals.

Verbal communication and persuasion skills to develop complementary working relationships with regional managers to discuss major strategic/business and financial issues and develop proposals as well as persuade and gain support for alternative financial solutions to specific operational problems.

...

Effort

Intellectual Effort

...

Intellectual effort is required to develop complementary working relationships with Regional managers to promote a strong team concept, shared accountability, and provide relevant business and financial expertise to manage major 'high volume' budgets and resolve on-going and emerging operational problems and issues from a financial perspective. Effort increases with the requirement to look beyond traditional work patterns and practices involving the adoption of new comptrollership concepts, the Management Accountability Framework (MAF), the PAA and its application, active monitoring, internal audit framework, business technologies and eCommerce initiatives, etc., to become an integral component of the Regional Management team and identify and develop innovative financial solutions to address high risk financial concerns and a broad range of operational problems and issues relating to changes in programs, offender population trends, and jurisdiction issues, as well as capital construction, facilities maintenance and contract issues.

...

[Sic throughout]

[Emphasis in the original]

14 Section 33 of the *FAA* states as follows:

...

33 (1) *No charge shall be made against an appropriation except on the requisition of the appropriate Minister of the department for which the appropriation was made or of a person authorized in writing by that Minister.*

(2) *Every requisition for a payment out of the Consolidated Revenue Fund shall be in such form, accompanied by such documents and certified in such manner as the Treasury Board may prescribe by regulation.*

(3) *No requisition shall be made pursuant to subsection (1) for a payment that*

(a) would not be a lawful charge against

the appropriation;

(b) would result in an expenditure in excess of the appropriation; or

(c) would reduce the balance available in the appropriation so that it would not be sufficient to meet the commitments charged against it.

...

15 And finally, the grievor pointed to the Treasury Board Secretariat's *Directive on Account Verification (Excerpts)* effective July 1, 2014, at paragraph 6.2, which includes the following:

6.2 Account verification by individuals responsible for certification under section 34 of the Financial Administration Act

Individuals who have been delegated authority to confirm and certify entitlement for both payments and interdepartmental settlements are responsible for the following:

...

All relevant statutes, regulations, orders in council, policies and directives and other legal obligations have been complied with;

[Emphasis in the original]

16 Paragraph 6.3 of that policy states that with respect to quality assurance, payment, and interdepartmental settlement authority, financial officers are responsible for the following:

6.3.1.1 When exercising payment authority for payments pursuant to section 33 of the Financial Administration Act, ensuring that:

- **there is auditable evidence demonstrating that account verification has taken place and has been certified by an individual with delegated financial signing authority pursuant to section 34 of the Financial Administration Act;**

- **[and that] no payment is made when the payment:**
 - **is not a lawful charge against the appropriation;**

...

17 The grievor also cited the CPA's code of professional conduct from August 2016. In particular, he noted the following:

...

[R]egistrants who occupy positions of senior authority should recognize that such positions include an obligation to influence events, practices and attitudes within that organization. Accordingly, such registrants should encourage an ethics-based culture in their organizations that emphasizes the importance of ethical behaviour and compliance with generally accepted standards of practice of the profession. At all times, registrants are expected to act in relation to other professional colleagues with the courtesy and consideration they would expect to be accorded by their professional colleagues.

...

Ethical conflict resolution

Circumstances may arise where a registrant encounters and is required to resolve a conflict in the application of the fundamental principles or compliance with the CPA Code derived therefrom. When initiating a process for the resolution of an ethical conflict, a registrant should consider, either individually or together with others, as a part of the resolution process, the following:

- *relevant facts;*
- *ethical issues involved;*
- *fundamental principles and provisions of the CPA Code applicable to the matter in question;*
- *established internal procedures; and*
- *alternative courses of action.*

Having considered these issues, the registrant should determine the appropriate course of action that is consistent

with the CPA Code. The registrant should also weigh the consequences of each possible course of action. If the matter remains unresolved, the registrant should consult with other appropriate persons within the firm or employing organization for help in obtaining resolution.

Where a matter involves a conflict with, or within, a firm or an employing organization, a registrant should also consider consulting with those charged with governance of the organization, such as the board of directors or the audit committee.

It would be in the best interests of the registrant to document the substance of the issue and details of any discussions held or decisions taken, concerning that issue.

...

FROM THE CODE

...

201 Maintenance of the good reputation of the profession

...

Compliance with regulatory legislation

A registrant should be cognizant of and comply with the provisions of any legislative requirements pertaining to any of the registrant's professional services.

...

The public interest

Clients, employers and the public generally expects that a registrant will bring the qualities of objectivity, integrity and due care to all professional services. It therefore becomes essential that registrants will not compromise their professional judgement to the will of others. When a possible ethical conflict arises because another person in an organization overrides the professional judgement of a registrant, the registrant should refer to the ethical conflict resolution guidance in the Preamble to the CPA Code.

Registrants may be exposed from time to time to situations that place pressures upon objectivity and integrity, and it would be impractical to define all such situations. However,

such pressures are subject to powerful countervailing forces and restraints. These forces include liability in law, responsibility to the profession for professional actions and, most importantly, the ingrained resistance of a disciplined professional person to any infringement upon integrity. A registrant recognizes that credibility and value as a professional depend largely on integrity and objectivity.

205 False or misleading documents and oral representations

A registrant shall not:

(a) sign or associate with any letter, report, statement, representation or financial statement which the registrant knows, or should know, is false or misleading, whether or not the signing or association is subject to a disclaimer of responsibility, nor

(b) make or associate with any oral report, statement or representation which the registrant knows, or should know, is false or misleading.

...

[P]rofessional duty prohibits a registrant from being associated with financial statements or other information, whether written or oral, which the registrant knows, or should know, to be false or misleading.

When a registrant finds it necessary to become disassociated from false or misleading information, it would be prudent for the registrant to consider obtaining legal advice.

...

213 Unlawful activity

A registrant shall not associate with any activity that the registrant knows, or should know, to be unlawful.

[Emphasis in the original]

18 The grievor relied upon a memo dated February 29, 2012, and addressed to all CSC financial staff (“the memo”). It was signed by the CSC’s chief financial officer (CFO) at its national headquarters (NHQ). The memo stated as follows:

As finance officers within CSC, many of us have been delegated specific authorities by the Minister of Public Safety and the Commissioner with regards to the financial administration of the CSC. In a period of increased activity as a result of the legislative changes and increased transparency and accountability, it is an appropriate time to remind you of these responsibilities, and to express to you, as your Chief Financial Officer, my full support in the diligent execution of your duties.

You will find included in this document links to the Financial Administration Act (FAA), the TBS Directive on Account Verification [etc]. I ask that you take time to review the FAA (Sections 32, 33 and 34 in particular) and the other noted references. These critical documents highlight the importance of our roles, as well, the numerous links within the Financial Directives demonstrate the knowledge required in the fulfillment of our duties. Such duties include not only the technical aspects such as ensuring properly authorized application of FAA section 34, proper coding, or other internal controls, but also focus on the importance to exercise a 'challenge function' in applying the test for reasonableness and value for money.

It is well understood that exercising your responsibilities and the challenge function can, at times, place finance officers in difficult situation, and can lead to some angst. This is particularly the case in areas such as the hospitality approvals, travel expenses, claims against the crown, etc. As finance professionals we must feel free to raise issues of concern to higher levels for discussion when required. To this end, I would like to again assure you that you have my full support as the Chief Financial Officer, as well as the support of the finance executive and Regional Comptrollers in exercising your responsibilities.

As we embark upon the challenging times ahead, I am confident that I can count in the professionalism of the CSC financial community.

[Sic throughout]

19 It is important to note that while he was the senior ranking financial official in the Pacific Region and had 39 staff members reporting directly to him, the grievor was a member of a management team in his region and was part of a national management hierarchy; he had counterparts across several regions in the country, and a national executive was headquartered in Ottawa, Ontario.

20 The grievor testified that he spent the 2014-2015 fiscal year on leave and that he taught at the Canada School of Public Service. Upon his return, he said that he found that the Pacific Region finances were in trouble and that he was met with a \$5 million budget deficit. He also testified that a new supervisor, Cari Turi, Assistant Deputy Commissioner for Integrated Services in the Pacific Region, was overseeing his work. He said that she was a former correctional officer with no corporate service background or experience.

21 This matter of a comptroller's interactions within a management team was addressed directly in the testimony of a former senior CSC manager, Todd Mitton, who had served as the CSC's national comptroller from 2009 to 2015. Counsel for the employer helpfully consented to Mr. Mitton testifying via videoconference.

22 The grievor relied on the memo, which provided strong support for the statutory authority delegated to comptrollers in their financial management and challenge functions to ensure that the employer received value for money. The memo stated as follows in part:

... In a period of increased activity as a result of the legislative changes and increased transparency and accountability, it is an appropriate time to remind you of these responsibilities, and to express to you, as your Chief Financial Officer, my full support in the diligent execution of your duties.

It is well understood that exercising your responsibilities and the challenge function can, at times, place finance officers in difficult situation [sic], and can lead to some angst. This is particularly the case in areas such as hospitality approvals, travel expenses, claims against the crown, etc. As finance professionals, we must feel free to raise issues of concern to higher levels for discussions when required. To this end, I would like to again assure you that you have my full support as the Chief Financial Officer, as well as the support of the finance executive and the Regional Comptrollers in exercising your responsibilities.

As we embark upon the challenging times ahead, I am confident that I can count in the professionalism of the CSC financial community.

23 Mr. Mitton was asked about the memo and testified that he had drafted it.

He explained that it was written during the “Deficit Reduction Action Plan” (DRAP) era of severe financial pressure to find internal savings from operating budgets. He testified that it was intended to assure comptrollers that NHQ “had their back if the financial officers had to raise issues”. He added that financial officers knew it was their duty to exercise their challenge function and stated that they had to “air risks as high up the chain of command as necessary.”

24 When he was asked in his examination-in-chief about a situation of an improper invoice being presented to him for payment, Mr. Mitton testified that depending upon the circumstances; he might seek legal counsel on the matter and then possibly raise it with senior management, in order to provide advice. He added that this advice could include the rule or guideline that had been contravened in his opinion and how such a problem could be avoided in the future.

25 When he was asked what he would do if he discovered an illegal payment, Mr. Mitton testified that upon receipt of legal counsel, the matter could possibly be referred to the employer’s security section for an investigation and potential further remedial action.

26 When he was asked about some of the specific expenditures that the grievor had challenged (which shall be examined in detail later), Mr. Mitton testified that he did recall the issues that the grievor had raised, that each one had been investigated, and that senior management had held several discussions, sometimes including senior officials from NHQ, to ensure that the grievor’s concerns had been heard. The grievor’s vigorous presentation of his concerns to senior management both at the regional level and at NHQ was plainly evident in the review of the exhibits, in his testimony and in that of Mr. Mitton.

B. The grievor’s performance evaluations

27 The grievor alleged that evidence of employer reprisals towards him was clear in his PA. At the hearing, testimony was introduced about several of his PAs, which were also adduced as exhibits. I found that with few exceptions, they were very positive in their portrayal of him as a valued employee. Specifically, he pointed to his 2015 year-end assessment in the “Competencies (Expected Behaviours)” section,

which, in addition to several very positive statements about his good work, stated the following:

...

... Dan does struggle with the tact and approach he uses in communicating his beliefs to others....

... While Dan is very passionate about his work, he is often frustrated with organizational decisions that are not consistent with his views/perspectives/advice and sends emails and/or voices his frustrations without taking the time to understand or appreciate other points of view. In terms of this competency of thinking things through, Dan needs to analyze these setbacks and seek appropriate venues and language for addressing his concerns. Dan needs to utilize appropriate strategies for understanding and moving forward when decisions do not match his position.

... [W]hile Dan's ethical framework is sound and is a strength, Dan does struggle with the tact and approach he uses in communicating his beliefs to others and, in the process of doing this, damages the relationships of those he is working with. Dan has not followed the appropriate channels of seeking out information/answers with his supervisor before sending emails to senior managers and, alternatively, has also sought information from his supervisor and has proceeded to send emails or voice concerns to senior managers or others regardless. Dan needs to focus on listening to others points of view, respecting, considering and incorporating them into his understanding of a situation.

... Dan does struggle maintaining a constructive attitude in the face of change and, as noted above, does need to find ways to communicate ideas effectively and respectfully and wholesomely engage others in an exchange of ideas before formulating positions....

...

[Sic throughout]

28 The grievor testified about how he considered this PA extremely unfair and unjustified. He alleged that it was retaliation against him for what he viewed as his challenge to his manager on poor spending decisions in their region. The grievor stated that in his opinion, this PA would have effectively limited if not ended his career, as he expected that potential prospective employers would access it and would then be

dissuaded from hiring him.

29 In cross-examination on this point, the grievor admitted that other federal public service managers might not necessarily be able to access this PA, and furthermore, when he was asked for one, he stated that he could not identify a specific job opportunity that he had been denied that might have been linked to this PA.

30 In addition to this PA from 2015, the employer questioned the grievor about the details of his 2012 PA, which was conducted several years before Ms. Turi was promoted to supervising him, in 2015-2016. The 2012 PA also contained several very positive statements about his good performance, but it also had the following comments about his communications and the need to work better with others:

...

On occasion, the approach Dan takes to bring forward issues and share his opinions has a tendency to alienate stakeholders and cause dissension. For example, this past fiscal year, Dan took it upon himself to declare to the ACCS that he would be implemented the model NHQ has and dividing his organization to Resource Management and Comptrollership and only focus his efforts on one of these branches and requested that another position be created to focus on the other branch. Rather than engaging in a meaningful discussion with the key stakeholders, Dan made a declaration directly to the ACCS. Dan needs to take a moment to take into consideration the implications of his actions before proceeding forward.

...

[Sic throughout]

31 Ms. Turi was the grievor's direct supervisor from 2014-2016. She testified as to several examples of his actions that had led her to write the noted recommendations in his PA that he objected to.

32 One such example arose from a \$40,000 expenditure from a regional budget allocation. The regional management team decided to conduct two outreach and relationship-building workshops with an important stakeholder group. She testified that the grievor opposed this expenditure on the grounds that it was low priority in his

opinion, given that the CSC was in a current-year budget-deficit position. He strongly recommended that the \$40,000 be redirected to deficit management.

33 Ms. Turi explained that she discussed the grievor's concerns with him and with the regional management team, which then decided to proceed with the expenditure. She testified that the expenditure was entirely appropriate from the budget line being used. However, she found out later that when her regional management team decided to proceed with it, the grievor then contacted the NHQ comptroller in Ottawa to continue his opposition, without notifying her.

34 In light of the earlier and consistent PA from a different manager and the testimony from Ms. Turi, who was the grievor's direct supervisor, I conclude that the noted statements in the PA about him have a rational justification and were neither fabricated nor appear in any way to have been motivated by bad faith or retaliation against him.

35 I make no comment on whether the 2015 PA is fair or reasonable. As the former Public Service Labour Relations Board concluded in *Tudor Price v. Deputy Head (Department of Agriculture and Agri-Food)*, 2013 PSLRB 57 (upheld by the Federal Court on judicial review in its file number T-1074-13 (unreported)), the Board has no jurisdiction under s. 209 of the *Act* to consider a grievance about a performance appraisal (see paragraph 38).

C. Budget expenditure concerns

36 The grievor's duties were perhaps most animated in his "challenge" function, which he vividly brought to life in a series of budget expenditure concerns that were introduced in testimony at the hearing.

37 The grievor testified that he challenged the appropriate manager in the Pacific Region who had authorized the purchase of a large white sport utility vehicle (SUV) for parades and other ceremonial events that honour CSC staff. The grievor testified to his adamant view that the SUV was of dubious value and much more importantly that emergency lights and a siren were installed on its roof, in breach of the British Columbia *Motor Vehicle Act* ([RSBC 1996] c. 318). That legislation restricts such

emergency equipment to law enforcement authorities, which does not include the CSC honour guard. The grievor also testified that the SUV was fitted with visual identification, in breach of federal government policy.

38 The grievor testified and provided documentary evidence in the form of emails and memos that he had used to pursue his concerns over what he saw as the illegal installation of the emergency lights and siren on the SUV. In his testimony, he also noted that his interventions had resulted in an email dated March 31, 2016, from NHQ's senior manager of support services, directing that "... there should be no light bars on this vehicle and NHQ did not paid [sic] for the lights that have been installed on this vehicle. It [sic] should be removed."

39 In her testimony on this matter, Ms. Turi explained that she was well aware of the grievor's concerns and that she had discussed it with him on more than one occasion.

40 Ms. Turi also testified that she had consulted NHQ on the lights and siren issue and that the lights had in fact been installed in the SUV's interior, on either the dashboard or the windows, and that in other communications, NHQ had assured her that the interior mounting complied with the B.C. legislation.

41 As to the issue of value for money, she explained that the ceremonial honour guard is a very important CSC function that is used to honour colleagues and boost staff morale and that children enjoy the emergency lights and siren when the SUV is driven in parades.

42 She also stated that local law enforcement partners had donated the emergency equipment and that the CSC had been required to pay only for the installation cost out of its budget, which she estimated at \$800.

43 The grievor submitted as an exhibit an email dated March 30, 2016, from the Acting Chief of Facilities Management in the Pacific Region, stating that the installation cost was \$899.98 or \$1887.57. The email is not clear if those are separate costs or whether the larger sum is a total cost of the lights, sirens, and decals.

44 I also note that the grievor submitted 13 pages of emails as exhibits, which

involved numerous officials, and 1 photo of the SUV, which documented his efforts and his challenge of the expenditure.

45 Important to note in the analysis of this issue is Ms. Turi's email to the grievor dated April 22, 2016, in which she stated as follows:

Dan,

Just so we are clear, never once did I suggest that the issues you were raising were wrong or inappropriate so please do not feel as though your credibility in terms of knowing your job and doing your job are impacted here. That is not the issue. As discussed, the issue is that you did not discuss your concerns with me, Bill or the RDC before you went to the NHQ with claims that we broke the rules. The vehicle was fully discussed with NHQ and we had approval. You will note that in the attached email.

I consider this matter closed.

...

46 And finally, one of the many issues that caused the grievor to believe that his functions under the *FAA* were being thwarted was that a manager in his region had decided to use departmental funds to help create t-shirts for a charity fundraising run to promote the support and treatment of staff with post-traumatic stress disorder.

47 The grievor submitted emails as exhibits and testified about his concerns, which arose over an expenditure of approximately \$900 to pay for silk-screen printing costs for the t-shirts. Regional management supported the expenditure as an important priority for the health and well-being of local staff. The grievor wrote several emails and testified to his conclusion that the expenditure was clearly not allowed pursuant to Treasury Board policy.

48 The evidence on this matter concluded with the grievor and Ms. Turi exchanging emails. On April 27, 2016, he wrote the following: "... When Terry and I discussed this some time ago ... I had advised him that I spoke to [the A/Comptroller] and he said this is a Sponsorship ... versus a Program therefore not permitted from Public Funds."

49 Ms. Turi replied approximately one hour later with, “Hi Dan, This initiative was out of the Headstarter program ... The purchase that Terry made was within that scope and is supported for this special initiative.”

50 The grievor also testified forcefully as to his opinion that the Pacific Region improperly made a staffing appointment and then provided retroactive pay that was beyond the period provided in the formal appointment paperwork.

51 In his testimony about this issue, the grievor said that he voiced his concerns about the retroactive pay being improper but that he had recused himself from the matter. The reasons for his recusal were not stated, so when I asked him to clarify, he explained that his spouse had either sought or would have sought the same position and that due to this, he recused himself from the discussion of the matter.

52 Despite his claim of recusing himself, the grievor testified at length that he had voiced his concerns about it, and many pages of evidence were adduced as exhibits documenting his communications of his concerns to several managers, including those at NHQ.

53 In her testimony about this matter, Ms. Turi explained that in her view, it had been a perfectly normal staffing action that had followed proper procedure and that had had the full support of the Pacific Region’s senior executive. She stated that after the grievor’s concerns were noted, senior management reviewed the issue, and that nothing untoward was found.

54 If I conclude anything from this staffing matter, it was that the grievor exercised poor judgement when he inserted himself into a professional matter involving his spouse, who also worked for the CSC.

55 Another matter the grievor raised as an example of what caused his frustration to increase and of trying to exert his authority under s. 33 of the *FAA* was that the department signed a memorandum of understanding (MOU) to keep union (Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN) executives working full-time on union business on active CSC duty, to allow them to continue to accrue the pension and many other benefits under the collective agreement.

56 The grievor viewed the MOU as improper and strongly believed that the active duty should not have been allowed as it caused the employer to accrue significant costs over time. In cross-examination, he admitted that the MOU in question provided for the union to repay the costs of its executive being away from work on union business.

57 I do not have sufficient evidence to rule on whether the full cost of the union executive being away on union business, including all benefits, was actually repaid, and for what period. As such, I cannot find that anything to do with this matter was improper.

58 The grievor called Phyllis Janzen to testify. She has enjoyed a full career in financial management in the federal public service. During the time in question, she was the finance chief at the Fraser Valley Institution.

59 Ms. Janzen testified about how the grievor supported her in her challenge functions and gave examples of financial expenditures for things like gift baskets, flowers, and rain outerwear that she had determined were not compliant with Treasury Board policies. She mentioned how she challenged the respective managers to return the items or use their own funds to cover either the entire cost or its non-compliant portion. I listened carefully to her testimony, and I find that none of it has probative value.

60 Taken individually or cumulatively, I do not find that these examples of the employer's spending that was challenged by the grievor or his resulting interactions with his superiors are of such a magnitude or severity to support a claim of ill treatment or of his authority being usurped. Nor do I find any of management's actions punitive or reprisals for the grievor's actions.

61 The grievor relied extensively upon the 2003 Office of the Auditor General's *Report on the Office of the Privacy Commissioner of Canada* (known colloquially as the "*Radwanski Report*") and its following findings:

...

... many senior executives ... turned a blind eye to breaches

of the law and policy and to other problems in such areas as staffing, financial management, contracting, and travel and hospitality. To varying degrees, executives failed to discharge their duties in accordance with such public service values as fairness, integrity, and impartiality.

62 The grievor argued that the workplace issues he faced that were outlined in his evidence were similar enough to show that one of the conclusions of the *Radwanski Report* supported his plight, as follows: "... Under section 33 of the *FAA*, the person who 'signs the cheque' for goods and services must have the authority to do so ... and must be satisfied that it is a lawful charge against the appropriation."

63 I do not find that the *Radwanski Report* is of sufficient relevance to the evidence in the matters before me to give it any probative value. I neither comment upon nor rule upon the appropriateness, the value for money, or the legality of the expenditures that the grievor challenged and that are documented in this decision.

64 However, I can easily determine that the grievor took appropriate steps, as outlined in his authorities and as confirmed in Mr. Mitton's testimony, to question and when required to alert more senior managers to what the grievor saw as questionable spending due to value for money, improper authorizations, or contrariness to Treasury Board policies

65 Rather than being examples of *Radwanski*-style improprieties, I see these items examined in evidence as rather predictable daily struggles within a large department with large management teams pursuing their many duties and interests. None involved mal-intent or criminal or otherwise illegal manifestations.

66 Given Ms. Turi's explanations of each challenged expenditure and the many email discussions of these issues that the grievor started when exercising his challenge function, I am satisfied that all the issues were within the normal realm of departmental activities and that the grievor performed his proper challenge function with respect to each one, as Mr. Mitton outlined.

D. Direction to freeze expenditures

67 Perhaps most significant to the grievor's increasing frustration and what

was to be his final interaction with management, was his decision to order his regional managers to stop spending money. He testified that by December 2016, he had become very concerned and anxious, since the employer both nationally and in his region was in a current-year budget-deficit position. He attended a meeting at NHQ on December 6 and 7, 2016, at which he and the other regional comptrollers were briefed on the state of the budget and the forward-looking plan.

68 The grievor testified that the Deputy Chief Financial Officer (DCFO) for the department shared his concerns about the grave fiscal outlook as the Pacific Region was in a \$15 million projected deficit for the fiscal year. He testified that the DCFO said that the budget concerns had been raised with the national executive committee, including the commissioner, but that he felt that they had not taken his concerns seriously enough.

69 According to the grievor, most important in this briefing was the anticipated settlement of staff salaries with a large bargaining agent in a new collective agreement that would impact the employer's budget. He testified that they were told that a reserve was being held nationally for what was expected to be a wage increase in the very near future that would most certainly impact that year's budget. He testified that the regional comptrollers were told that they would each have to find \$20 million in current-year budget savings in the final quarter of the fiscal year.

70 The grievor then explained that shortly after the NHQ's briefing, he read media reports of the wage settlement being significantly more than was expected, thus raising the spectre of the budget reserve being insufficient to cover this additional cost to the employer nationally. He said that he spoke to this concern during a December 15, 2016, teleconference of regional comptrollers hosted by NHQ.

71 As background to these events and his concerns, the grievor testified that there had been similar budget stress in the past but that NHQ had covered budget shortfalls from its reserves. He also stated that in the past, the Treasury Board had allocated supplemental funding for wage settlements but that it had ceased doing so several years earlier. He said that he had grave concerns about that current fiscal year.

72 Based upon these grave concerns, the grievor testified that he decided to

issue a budget direction to all managers in the Pacific Region to immediately freeze any new commitments to expenditures and that after a mandatory 30-day notice period, all discretionary spending on travel, accommodations, hospitality, and non-essential contracts for services would be frozen. He testified that this decision was made pursuant to his authority under s. 33 of the *FAA*.

73 On this matter of the grievor's dire concerns over the departmental budget, Mr. Mitton testified in cross-examination that in his years of service with the employer, it had never exceeded its annual budget appropriation, as voted by Parliament. He did admit that pressure often arose during the fiscal year and that quarterly targets were not always met, but he said that by every year end, the national executive had properly balanced the budget, without exceeding its spending authority.

74 Mr. Mitton also testified as to the fact that if a chartered accountant has serious concerns about an aspect of financial management, she or he can sign the attestation of the annual report "with reservations".

IV. Analysis

A. The grievor's *Burchill* motion

75 The grievor requested that I deny the employer an opportunity to defend itself with respect to the grievance due to its failure to reply in a timely manner. The grievance was signed on February 1, 2017. Counsel for the grievor wrote to the employer on March 17, 2017, to indicate that no response had been received and that he reserved the right to refer it to adjudication. The employer replied in writing on March 27, 2017, indicating that the grievance was being redirected to the proper first-level authority, in accordance with the relevant collective agreement.

76 The grievor noted that s. 72(1) of the *Regulations* specifies a deadline for issuing decisions to grievors no later than 20 days from when the grievance was received.

77 After that deadline passed, the grievor referred the grievance to adjudication and then requested a motion to declare that the employer was barred from responding to the grievance at adjudication based upon the Federal Court's ruling in

Burchill v. Attorney General of Canada, [1981] 1 F.C. 109 (C.A.).

78 *Burchill* determined that a grievor cannot alter the substance of his or her grievance after referring it to adjudication. In a twist of logical extrapolation, in the grievor's written submission, presented before the hearing, his counsel argued that it would be consistent with *Burchill* to rule that the employer's lack of reply to the grievance should be its only allowed reply at adjudication. This would effectively mean that it could make no reply to the grievance throughout the adjudication hearing.

79 I do not agree with the grievor's motion as I find it misapplies *Burchill*. Denying the employer an opportunity to present evidence and argument, under the circumstances of this case, would deny its right to natural justice. As such, I denied the motion.

B. The employer's jurisdictional motion

80 The employer argued that I did not have jurisdiction to hear a grievance alleging constructive dismissal. Its counsel argued that the Board has to date not recognized the legal doctrine of constructive dismissal.

81 Counsel for the employer pointed to s. 209 of the *Act*, which he argued does not provide the Board with jurisdiction to hear grievances arising from either resignations or allegations of constructive dismissal. He also argued that the *FAA* precludes the argument that the grievor put forward. Counsel for the employer suggested that rather, the grievor elected to resign his position, as is allowed under the *Public Service Employment Act* (S.C. 2003, c. 22; *PSEA*).

82 The grievor argued that his cumulative treatment under several acts of his employer brought him within the realm of common law constructive dismissal as the Supreme Court of Canada enunciated in *Potter v. New Brunswick Legal Aid Services Commission*, 2015 SCC 10.

83 That case found that a two-stage test applies to determining if constructive dismissal has occurred. Firstly, the court must determine if an express or implied term of the employment contract was breached such that it substantially altered an essential term of the contract (see paragraph 34). Secondly, if so, the court will consider whether

the breach was sufficiently serious to constitute constructive dismissal (see paragraph 32).

84 *Potter* also found that actions by the employer that make continued employment intolerable can also be found to constitute a breach of the employment contract and that such a consideration requires considering the cumulative effects of past acts of the employer and the determination of whether they evinced an intention of the employer to no longer be bound by the contract (see paragraph 33). The Court also noted that the evidentiary foundation for the perceived magnitude of the breach can be an important determining factor (see paragraph 36).

85 And finally, in *Potter*, the Court stated that when considering the second stage of the test after a breach has been found, the conduct in question must be viewed in the context of whether a reasonable person looking at all the circumstances would conclude that the employer no longer intended to be bound by the terms of the contract (see paragraph 42).

86 The grievor argued that taken together, the incidents he explained led him to conclude that the employer no longer intended to be bound by the terms of what he argued was an employment contract as he felt that his statutory duties had been frustrated and finally usurped by his manager, Ms. Turi.

87 In his review of the Board's past considerations of constructive dismissal claims, the grievor noted that the Board has considered the matter and while it has not approved the doctrine, it also has not ruled it out. *Hassard v. Treasury Board (Correctional Service of Canada)*, 2014 PSLRB 32, considered a demotion of a senior manager that resulted from a lengthy investigation. The grievor in that case claimed that her demotion amounted to constructive dismissal.

88 After interpreting the relevant statutes, the Adjudicator determined that, in the public sector, the ability to demote an employee does exist and that therefore, a demotion cannot constitute a fundamental breach of the employment contract (see paragraph 177). Rather, he found that a demoted person has recourse to grieve through statute and the relevant collective agreement. The Adjudicator then concluded that it was not necessary to rule definitively on whether the doctrine of constructive dismissal

has any role to play in employment contracts in the public sector (see paragraph 179). He framed the question as "... whether the doctrine of constructive dismissal has any place in the public sector" (see paragraph 179).

89 Recently, the Board considered that same question in *Cameron v. Deputy Head (Office of the Director of Public Prosecutions)*, 2015 PSLREB 98. That case involves a skilled professional who was recruited to fill a senior appointment in a department who then, after a period of three years in that position, was "humiliated" by being demoted to a lower-level classification in what she called a "bait-and-switch" (see paragraphs 116 and 124). Adjudicator Perrault found the facts of what happened to Ms. Cameron "unsettling" (see paragraphs 116 and 125), but she concluded that in fact she did not have jurisdiction to hear the constructive dismissal claim.

90 Adjudicator Perrault succinctly analyzed the Board's jurisdiction under s. 209 to receive grievances for adjudication and found that the demotion that the grievor in *Cameron* suffered was permitted by statute under the *FAA*. She added that:

85 *The Board does not have jurisdiction to hear referrals to adjudication of all grievances in the federal public service, no matter how meritorious. Jurisdiction has to be found in the enabling statute. In this case, it cannot be found.*

86 *Individual grievances are referred to the Board under section 209 of the PSLRA, which reads as follows:*

209 (1) An employee ... may refer to adjudication an individual grievance that has been presented up to and including the final level in the grievance process and that has not been dealt with to the employee's satisfaction if the grievance is related to

(a) the interpretation or application in respect of the employee of a provision of the collective agreement or an arbitral award;

(b) a disciplinary action resulting in termination, demotion, suspension or financial penalty;

(c) in the case of an employee in the core public administration,

(i) demotion or termination under paragraph 12(1)(d) of the Financial Administration Act for unsatisfactory

performance or under paragraph 12(1)(e) of that Act for any other reason that does not relate to a breach of discipline or misconduct, or

(ii) deployment under the Public Service Employment Act without the employee's consent where consent is required

...

(2) Before referring an individual grievance related to matters referred to in paragraph (1)(a), the employee must obtain the approval of his or her bargaining agent to represent him or her in the adjudication proceedings.

...

91 The Board also recently considered this question in *Nadeau v. Deputy Head (Correctional Service of Canada)*, 2017 PSLREB 31. Adjudicator Jaworski considered a somewhat similar circumstance. While he allowed the constructive dismissal allegation to be put before him, he found that the grievor in that case had not put evidence before him upon which such an allegation could have been proven. Therefore, he declared that he was without jurisdiction. He described as follows the jurisdictional issue to be met in a constructive dismissal grievance that was referred to adjudication:

...

140 *The employer objected to my jurisdiction to hear this matter, submitting that it did not fall within s. 209 of the Act. Given the nature of the grievance, which is an allegation of constructive dismissal, it was not possible to hear the evidence on the objection without hearing the evidence on the merits of the grievance. As such, I heard all the evidence and reserved on the question of jurisdiction.*

141 *To be within the jurisdiction of the Board under s. 209 of the Act, a grievance must fall within certain criteria. The grievor's bargaining agent, who ceased to represent him by the time the hearing proceeded, referred the grievance to adjudication under both s. 209(1)(b) of the Act, submitting that it arose from disciplinary action that resulted in a termination of employment, demotion, suspension, or financial penalty, and s. 209(1)(c)(ii) of the Act, submitting that he was subject to a deployment in the core public*

administration under the PSEA without his consent when it was required. While he did not do so, the grievance could have also been referred to adjudication under s. 209(1)(c)(i) of the Act, that addresses termination of employment or a demotion under s. 12(1)(d) of the Financial Administration Act, for unsatisfactory performance.

142 Section 241(1) of the Act provides that no proceeding under the Act is invalid by reason only of a defect in the form or a technical irregularity. When you read the grievance, it is possible that the grievor's bargaining agent may have meant to refer the grievance also under s. 209(1)(c)(i) of the Act, and, as such, I shall address the jurisdictional question as if that section was meant to have been used.

143 For the reasons that follow, the employer's objection to jurisdiction is allowed, and the grievance is dismissed.

144 The grievance was filed on May 18, 2011. In it, the grievor alleged that he was constructively dismissed from his PS-02 position with the CSC. The grievance stated as follows:

I grieve the employer's decision to take away my duties I have performed for the last nine years and to significantly change my working conditions. This has caused me tremendous stress and anxiety. I have had to go on medical leave to take care of my health. The change in my duties and working conditions amounts to constructive dismissal.

145 I will deal first with the reference to adjudication under s. 209(1)(c)(ii) of the Act. This section deals with deployments that require consent. Nothing in the grievance suggests that a deployment with or without consent occurred. The allegation is that the grievor was constructively dismissed, which suggests that the employment relationship was severed. For this reason alone, the grievance could not have been referred to adjudication under s. 209(1)(c)(ii).

C. Sections 209(1)(b) and (c)(i)

146 If it is to fall under s. 209(1)(b) of the Act, the grievor must establish that he has suffered either a termination of his employment, a demotion, a suspension, or a financial penalty and that the act of either terminating him, demoting him, suspending him, or financially penalizing him arose out of a disciplinary action of the employer. It is insufficient to prove that he was terminated from his employment, demoted, suspended, or financially penalized unless the grievor establishes that that action was disciplinary. If it is to fall

under s. 209(1)(c)(i) of the Act, the grievor must establish that he has suffered either a termination of his employment, or a demotion for unsatisfactory performance.

147 *The grievor alleged a constructive dismissal, which the Supreme Court of Canada discussed in Potter, at paras. 30 through 33. They read as follows:*

[30] When an employer's conduct evinces an intention no longer to be bound by the employment contract, the employee has the choice of either accepting that conduct or changes made by the employer, or treating the conduct or changes as a repudiation of the contract by the employer and suing for wrongful dismissal....

[31] The burden rests on the employee to establish that he or she has been constructively dismissed. If the employee is successful, he or she is entitled to damages in lieu of reasonable notice of termination....

[32] ... There are two branches of the test that have emerged. Most often, the court must first identify an express or implied contract term that has been breached, and then determine whether that breach was sufficiently serious to constitute constructive dismissal....

[33] However, an employer's conduct will also constitute constructive dismissal if it more generally shows that the employer intended not to be bound by the contract....

148 *For me to have jurisdiction, the grievor had to establish that, on a balance of probabilities, the employer's action constituted a termination of employment (as that is what he alleged, a constructive dismissal) and that it was done for disciplinary reasons (s. 209(1)(b) of the Act), or for alleged unsatisfactory performance (s. 209(1)(c)(i) of the Act).*

149 *The specific allegation that the grievor made that amounted to the constructive dismissal was the removal of certain duties that he was carrying out over the period of nine years, which were taken away from him, and that his working conditions were significantly changed. Therefore, on a balance of probabilities, he had to prove that this happened, which would coincide with the first part of the test enunciated in Potter about the express or implied term of the contract that has been breached.*

150 For the moment, I will set aside the issue of whether the grievor's working conditions and duties amounted to express or implied terms of his employment contract. I am doing so because there is absolutely no evidence whatsoever before me that the employer removed certain duties or significantly changed his working conditions.

...

159 The grievor submitted that he did not have to prove that his job was taken away, just that he went home with no pay. This is incorrect. He had to prove that on a balance of probabilities he was constructively dismissed and that, if he proved it, the constructive dismissal fell within s. 209(1) of the Act. He failed to do so.

...

163 The grievor submitted that he was a senior PS-02, that he had a right to the job, and that the employer had no right to move him. The evidence did not disclose that the employer had demoted him or actually moved him. The terms and conditions of his employment were set out in the relevant collective agreement and relevant statutes and regulations. The FAA provides that the employer has the right to assign duties. Section 7 of the Act, as well as predecessor legislation governing the Board's predecessors (the PSLRB and the Public Service Staff Relations Board ("PSSRB")), set out that assigning duties does not somehow give the Board jurisdiction where it otherwise does not have any (see Synowski and Tuckett-Reddy).

164 The grievor submitted that per Hassard, he was entitled to grieve. While he might have had the right to grieve, under s. 208 of the Act, this did not give the Board jurisdiction to hear the referral to adjudication of the grievance under s. 209. A significant body of jurisprudence of this Board, the PSLRB, and the PSSRB holds that while many employer actions may be subject to grievances, not all are subject to adjudication.

165 As there is no evidence that the grievor was terminated from his position and in fact the evidence established the opposite; nor has he established that he has had duties removed such that a constructive dismissal (assuming it exists in the federal public sector) could be established the grievance does not fall within either s. 209(1)(b) or (c)(i) and as such I am without jurisdiction.

...

V. Conclusion

92 Given my findings of fact noted earlier, and consistent with the cases I have cited from Adjudicators Perrault and Jaworski, I conclude that the grievor has a very sincerely held but mistaken belief that he was constructively dismissed.

93 Considering the test enunciated in *Potter*, which firstly asks if an express or implied term of the employment contract was breached such that it substantially altered an essential term of the contract, I conclude the grievance fails. Each on their own or all taken cumulatively, I do not find the incidents described by the grievor breached any express or implied terms of his employment contract.

94 Like in *Hassard*, where the Board stated that it was not prepared to rule definitively on the question of whether the doctrine of constructive dismissal has any role in public-sector employment, this is not the case which provides the evidence necessary for me to answer that question definitively.

95 The evidence before me is insufficient for me to conclude anything other than the grievor experienced growing frustration with how he viewed his department's financial management. And that this growing frustration led him to feel ill, take sick leave, and then make what he testified was a somewhat hasty decision to resign based upon financial advice he was given about his pension entitlement.

96 Given my findings of fact that the grievor resigned, I have no jurisdiction to hear this matter, and accordingly, I dismiss the grievance.

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

VI. **Order**

98 The grievance is dismissed.

January 15, 2019.

**Bryan R. Gray,
a panel of the Federal Public Sector
Labour Relations and Employment
Board**