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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

LORRAINE LORTIE

Grievor

and

**DEPUTY HEAD
(Canada Border Services Agency)**

Respondent

Indexed as
Lortie v. Deputy Head (Canada Border Services Agency)

In the matter of individual grievances referred to adjudication

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

For the Grievor: Herself

For the Respondent: Caroline Engmann, counsel

~~Heard at Halifax, Nova Scotia,~~
April 4 to 7 and September 12 to 15, 2017, and April 10 to 13 and 23 to 26, 2018.

REASONS FOR DECISION

I. Individual grievances referred to adjudication

1 Lorraine Lortie (“the grievor”) filed two grievances, one against disciplinary action taken against her by the Canada Border Services Agency (CBSA or “the employer”), and one against her termination for unsatisfactory performance, which she alleged was done for disciplinary reasons and was an act of discrimination against her.

2 At the hearing, before evidence commenced, the employer allowed the disciplinary action grievance (file 566-02-12492). For that reason, this decision is for only the grievance numbered 566-02-12738, in which the grievor alleged that her termination was based on reprisal by the employer.

3 On November 1, 2014, the *Public Service Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365; *PSLREBA*) was proclaimed into force (SI/2014-84), creating the Public Service Labour Relations and Employment Board (PSLREB) to replace the former Public Service Labour Relations Board (PSLRB) as well as the former Public Service Staffing Tribunal. On the same day, the consequential and transitional amendments contained in ss. 366 to 466 of the *Economic Action Plan 2013 Act, No. 2* (S.C. 2013, c. 40) also came into force (SI/2014-84). Pursuant to s. 393 of the *Economic Action Plan 2013 Act, No. 2*, a proceeding commenced under the *Public Service Labour Relations Act (PSLRA)* before November 1, 2014, is to be taken up and continue under and in conformity with the *PSLRA* as it is amended by ss. 365 to 470 of the *Economic Action Plan 2013 Act, No. 2*.

4 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 PSLREB and the titles of the *PSLREBA* and the *PSLRA* 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

A. For the employer

5 The grievor was hired in 2008 as the regional disability management and accommodation case coordinator (DACC) in the CBSA's Halifax, Nova Scotia, office. The DACC position had been created to administer, promote, and implement the Disability and Case Management Program in the CBSA's Atlantic Region. It included some occupational health and safety responsibilities for that region.

6 The role required communicating, collaborating, and coordinating with people inside and outside the CBSA. Inside, these requirements involved the region and the CBSA's national headquarters. Employees, managers, union representatives, insurance carriers, health care professionals, and others were all involved in the accommodation process. The grievor was required to interact with colleagues from other parts of the CBSA to accomplish her mandate. She also had to interact with healthcare providers and support groups within the community.

7 From the beginning of her employment, the employer identified performance issues with the grievor's communication and interaction styles. Successive managers responsible for her performance throughout her employment tried unsuccessfully to deal with this problem. She was abrupt, rude, and uncompassionate. Her managers tried to counsel her and provided feedback, coaching, and training, with no success. The employer had no issue with her knowledge, but after years of efforts to help her develop and deliver her services in a suitable manner were met with resistance, in 2014, it imposed an employee performance action plan ("the action plan") on her.

8 The action plan specified milestones to be met by specific deadlines. It had three objectives, including service delivery excellence, and in her stewardship role, working effectively with others, along with improved communication. The grievor resisted the action plan from the start and failed to meet the goals. It was initially intended to last six months, but due to her lacklustre efforts, it was extended for a year. Her attitude and efforts towards the action plan did not improve, and she was eventually terminated for unsatisfactory performance.

9 Martin Boudreault hired the grievor when he was the CBSA's regional director of human resources in Halifax. She applied to and was successful in an external

appointment process for the Atlantic Region DACC position.

10 In 2006, when the CBSA decided to arm its workforce, the employer anticipated a sharp increase in the number of accommodation requests, so it created the regional DACC positions. Each regional Human Resources division in the country was to staff a DACC position to provide advice and guidance to the managers in that region on the accommodation process. The person in the DACC position was to make recommendations to management on accommodation cases, train management on the accommodation process, and facilitate accommodation or disability management cases with management, unions, and the employees in question. The DACC employee was to report to the labour relations manager and strengthen the labour relations unit's ability to provide services.

11 Mr. Boudreault did not recall whether the grievor received any orientation specific to the CBSA; the labour relations manager would have provided it. He testified that he received feedback on the grievor's performance from the labour relations manager and that at times, he observed it.

12 One occasion that stood out in Mr. Boudreault's mind occurred during a regional Labour-Management Committee meeting, when the grievor made a disparaging comment to the effect that she "[could] not take this anymore" and then left the room. This was particularly significant to Mr. Boudreault since she left at a time when her guidance was required. Mr. Boudreault did not hear her mention anything about that being a good point for a bathroom break before she left the room as she insisted she had said when questioned about it later. Patrick Loyer, her direct supervisor, and John Fagan, District Director of Newfoundland and a member of the management team at the meeting, witnessed the incident and commented to Mr. Boudreault about how the grievor's actions shocked them.

13 On December 7, 2009, Mr. Boudreault received a complaint via email about the grievor's behaviour in handling a disability management case (Exhibit 5, tab 1). The complaint arose from her behaviour at a meeting with an employee, her union representative, and her manager on November 27, 2009. Normally, Mr. Loyer

would have dealt with it but as he was on leave, Mr. Boudreault did. He forwarded the emails to the grievor and received her input. He then consulted with the acting Labour Relations Manager. Mr. Boudreault's findings and recommendations were sent to the grievor on January 4, 2010 (Exhibit 5, tab 1, page 4).

14 From his assessment of the information he received, including the response he received from the grievor on December 10, 2009, Mr. Boudreault concluded that she had acted in a way consistent with a successful outcome of the disability management case. The recommendations (bullets 4 and 5) were intended to remind her of her role to facilitate discussions on the duty to accommodate. Her role was to provide advice and guidance so that a manager could make informed decisions. It was the manager's role to make the decisions, not hers. She never followed up with Mr. Boudreault to discuss his recommendations or findings.

15 Later in January 2010, the grievor had a disagreement with Ernie Antle, a member of Mr. Fagan's team, about how to process forms. Mr. Fagan emailed both Mr. Boudreault and the grievor, asking why the grievor had copied people outside the CBSA on her emails discussing a workplace injury (Exhibit 5, tab 17). He was concerned that she had involved people from outside the CBSA rather than resolving the issue internally, at the lowest level.

16 Mr. Boudreault described this situation as indicative of the grievor's overall performance problems. She did not follow internal procedures first, and the way she communicated with clients was offensive. For example, her response to Mr. Antle, Mr. Fagan, and a representative from Labour Canada on January 22, 2010, when she was asked which forms needed to be signed, was, "I'm just the messenger'. It does not matter to me what Ernie Antle thinks is best. I'm following procedure" (Exhibit 5, tab 17, page 64).

17 Rather than raise this performance issue directly with the grievor, Mr. Boudreault mentioned it to Mr. Loyer and expected him to address it with her, even though in September 2009, she had threatened to file a harassment complaint against Mr. Loyer after a disagreement arose over the proper title of the Occupational Health and Safety Committee. She and Mr. Loyer had participated in informal conflict

management with an external consultant. Mr. Loyer was also briefly absent from the workplace. He returned in January 2010 to his role as the grievor's manager.

18 The grievor successfully completed her one-year probationary period despite the problems Mr. Boudreault noted during her first year with the CBSA. Mr. Loyer addressed these concerns and evaluated her performance, stating that she successfully met the requirements of the probationary period.

19 Mr. Loyer was the CBSA's regional manager of labour relations between October 2009 and March 2011, during which time he supervised the grievor and five other employees. He was responsible for the functional day-to-day supervision of the DACC, while the national DACC was responsible for the policy role. Any policy and programs direction came from the CBSA's national headquarters. The regions were responsible for implementing programs at their level. The regional DACC had two roles, which were to advise regional management on disability management and accommodation cases and to advise management on its occupational health and safety responsibilities, including the duty to accommodate.

20 A DACC has many interactions within a region and is required to provide advice and guidance to members of the regional management team, to the Human Resources unit, and to other stakeholders, such as unions or employees. The DACC is required to work collaboratively with Health Canada, insurance companies, healthcare providers, and other DACCs. Mr. Loyer assessed and evaluated the grievor's performance against the objectives. The national DACC had no role in the performance evaluation process.

21 Part of the performance management process for the grievor was developing a personal learning plan. Essential criteria for performing her duties was not only subject matter knowledge but also the ability to influence others and to display good interpersonal and communication skills. She demonstrated that she had the knowledge and experience required to do the job. She had a good work ethic and was punctual and diligent. However, her behaviour and attitude negatively impacted her relationships with colleagues, managers, and clients. Each concern was addressed with her as it arose, via verbal feedback, and was reflected in her performance review.

22 Mr. Loyer received complaints about the grievor and about how she performed her duties. One involved a letter she sent to an employee's doctor, which led to a complaint being made (Exhibit 5, tab 1) about the difficulties the employee was experiencing with her return to work. The grievor sent the letter without obtaining authorization from the employee and without copying her on it.

23 Another complaint was about a request from an employee for an explanation as to how a bona fide occupational-requirement report would affect her future with the CBSA. She reported that she had found the grievor aggressive and unfamiliar with the report (Exhibit 5, tabs 4 and 5). This complaint was very complex; it involved many of the grievor's colleagues as well as the union and local management. Mr. Loyer testified that the grievor was reluctant to participate in the group approach to resolving the situation, which negatively impacted the accommodation process.

24 At a meeting held in September 2009, Mr. Loyer asked the grievor to refer to the Occupational Health and Safety Committee by the term used in the *Canada Labour Code* (R.S.C., 1985, c. L-2; *CLC*), "Work Place Health and Safety Committee", when drafting policies and procedures. She explained to him that she did not agree because she believed it would cause confusion. He later put it in writing (Exhibit 5, tab 18, page 4). Her response was that his continued insistence that she use the language in the *CLC* was harassment.

25 Even though a direction of this sort is not harassment, Mr. Loyer gave the grievor information on how she could file a harassment complaint if she felt the need to. He also offered to resolve their conflict through the informal conflict management system (ICMS). He then informed Mr. Boudreault of the grievor's reaction to the direction (Exhibit 5, tab 18).

26 Also in January 2010, Mr. Loyer received an email from the President of the Nova Scotia Branch of the Customs and Immigration Union, which represented many of the CBSA's employees. A disagreement had arisen between the grievor, in her occupational health and safety coordinator role, and a union representative on a committee. She had insisted that he had been delinquent in filing an investigation report and that he not "... waste [her] time with unsound verbiage" trying to explain why it had

not been completed (Exhibit 5, tab 12, page 47). Mr. Loyer sent this email to the grievor asking for an explanation but did not recall receiving a reply.

27 On March 12, 2010, the grievor emailed Mr. Loyer, stating that she was taking a personal leave day on March 16. Since she did not meet the collective agreement criteria for that leave, Mr. Loyer replied in email, denying her request and proposing options that would allow her to take the day off. When she received his email, she went to his office and behaved very aggressively. He tried to explain to her that he was not giving her a hard time and that he was just applying the rules, which she would not accept. Due to the nature of their interaction, he composed a note to file to summarize their discussion (Exhibit 5, tab 2).

28 The grievor's communication issues were far-reaching. On November 10, 2010, Mr. Loyer left the workplace early, and the grievor emailed him the following (Exhibit 5, tab 3): "I was surprised to see you leave early on Wednesday. If I had known that you were leaving early, I would have asked for some of your time regarding assignments that are pressing." Not only did she send him that email, making him feel that she was monitoring his attendance, which was inappropriate, she also copied his direct supervisor, Valerie Leonard, which was detrimental to his reputation.

29 The grievor's communications were not only inappropriate, by CBSA standards for internal communications, but she was also unprofessional, rude, and abrupt in her outside communications. For instance, when she dealt with a medical practitioner at Health Canada who did not fill out forms to her satisfaction, she sent very direct communications demanding that he fill them out properly. This put additional stress on the CBSA's already strained relationship with Health Canada and was not conducive to a collaborative relationship.

30 During her employment with the CBSA, the grievor underwent a series of performance reviews and participated in developing her annual performance agreements. The one for 2008-2009 identified her business accountability goals, which were her primary goals for the year in administering, promoting, and implementing the CBSA's Disability and Accommodation Case Management (DACM) program within the region. She was to provide occupational health and safety services to management,

staff, and the public. She was to act as a key resource in providing advice and guidance on the DACM and occupational health and safety policy to management and was expected to communicate effectively with all stakeholders and her colleagues (see Exhibit 4, tab 4, page 33).

31 As part of the performance agreement process, the employer identified targeted skills and competencies. Key among them in this case were communication skills. When the grievor was asked what skills and knowledge she needed for the job she aspired to, she identified solid communication skills (see Exhibit 4, tab 4, page 37).

32 Also included in the performance agreement were competencies against which all members of the PE classification, including the grievor, were measured, including how she developed strong internal and external relationships (Exhibit 4, tab 4, page 39). Her ability to achieve this goal was measured in part by the level, timing, and appropriateness of her information sharing, the number of conflicts she was involved in that required senior management's intervention, the professional image she showed through her actions and statements, her ability to maintain her composure and to respond calmly in emotionally charged situations, and whether she took positive steps to calm others.

33 Mr. Loyer met with the grievor on February 27, 2009, to review her performance against these objectives. He stated in her review that at times, her reactions to situations had been objectionable and had needed correction. She received timely feedback on those events. He noted that she understood management's expectations in terms of attitude and behaviour in the workplace. For her part, she disagreed with Mr. Loyer's assessment and commented on the evaluation that her reactions did not affect her work.

34 Shortly after the performance review was completed, the grievor made harassment allegations against Mr. Loyer. After mediation and a meeting with his regional director general, Mr. Loyer agreed to remove his comments about the grievor's behaviour from the performance review, to give her a clean slate so that she could start over. However, he had put similar comments in a briefing note to the

Regional Director General on November 27, 2009, in preparation for a meeting with the grievor at which he intended to discuss the feedback on her client service survey and to note that he intended to advise her of her continuing behaviour and attitude problems. He noted that her behaviour and attitude currently remained objectionable and required correcting (Exhibit 4, tab 4, page 47).

35 Of particular concern to Mr. Loyer were the events of the November 2008 Labour-Management Committee meeting, which the grievor attended. She had objected to the union's position on medical certificates. According to Mr. Loyer, she gestured, stood up, and then left the room. She had attended to provide advice and guidance on the disability management protocols, and her behaviour of leaving when she disagreed with the union was unprofessional, according to him. Her behaviour caused discomfort in the room and disrupted the flow of the meeting.

36 Also according to Mr. Loyer, other employees in the Labour Relations unit had reported to him that the grievor was very loud and disruptive in the workplace when she expressed her dislike of the Excel software and the need to produce spreadsheets. Her comments negatively affected the rest of the Labour Relations team in the workplace. Mr. Loyer testified that he had concerns about the level of frustration she displayed in such circumstances and about her outbursts and displays of anger in an open workplace. Her technical ability with Excel was not his concern.

37 Management conducted a human resources survey to determine client satisfaction with the services provided by the regional Human Resources section, including those that the grievor provided. She disagreed with the comments made on her services. According to Mr. Loyer, she was obviously upset by the feedback she had received from clients. Her response to him, when he tried to discuss the feedback with her, was that the clients were "a-holes". Mr. Loyer testified that he told her that this type of reaction and comment was unacceptable, following which she got up and "stormed out of [his] office".

38 The grievor's 2009-2010 performance agreement (Exhibit 4, tab 5) set out objectives requiring her to demonstrate professionalism, integrity, and respect. She was to meet them by respecting her delegated manager's authority to make decisions, by

taking responsibility for her actions and taking corrective action as required, and by adhering to the employer's code of values and ethics. Her communications with clients, colleagues, and managers were to be open, timely, and respectful. As part of her ongoing training, she identified courses in communication, negotiation skills, and managing conflict.

39 Again in 2010-2011, in the grievor's performance agreement, deficiencies with her communication skills were noted. Under the section dealing with business-related accountability and measures, Mr. Boudreault (as Mr. Loyer was on leave) identified that she had to comply with the "Human Resources Division Communication Covenant".

He also identified the requirement to demonstrate professionalism, respect, and integrity through the same measures that Mr. Loyer identified the year before, as well as the need to communicate clearly and respectfully with management, colleagues, and clients. At this point, the grievor identified her learning objectives as career development, in particular the opportunity to obtain a master's degree in mediation. Her particular interests were to obtain employment in a true labour-relations function rather than the DACC or occupational health and safety functions.

40 About the same time as she requested labour relations training, the grievor requested a deployment to the CBSA's national headquarters. Mr. Loyer contacted his counterparts in Ottawa, Ontario, about her interests. He spoke to the Recruiting Manager to see if opportunities were available for her. The Recruiting Manager told him that she would contact the grievor and Human Resources about the options available to staff vacancies.

41 The grievor's requests for labour relations and mediation training were denied (Exhibit 4, tab 6), as many of the courses identified on her previous year's learning plan had not been completed. However, she did eventually complete many of them. A list of the training she received was entered (Exhibit 4, tab 12), which included conflict-communication-skills training and other communication courses.

42 Earl Hoeg was the regional director, corporate and program services, for the CBSA between April 2012 and December 2014. His area of responsibility included

the Human Resources branch in the Atlantic Region. The grievor reported to him through two levels of management. Director of Human Resources Mandy Beldock reported directly to him, Labour Relations Manager Nathalie Waples reported to her, and the DACC reported to the labour relations manager. By 2013, Kathy Lusk had replaced

Ms. Beldock, and Linda Titus had replaced Ms. Waples.

43 Mr. Hoeg had little direct interaction with the grievor other than at all-staff meetings and on conference calls. He was not involved in her performance reviews but was aware that she had performance issues that were being addressed. Ms. Lusk updated him at their bilateral meetings, at which she regularly raised her concerns with the grievor's performance.

44 Mr. Hoeg testified that the grievor interacted with several levels of management in her DACC role. He received feedback from directors and district directors who expressed concern with her communications. One of them was Rick Patterson, the district director in Newfoundland who contacted him about an email the grievor had sent, which he thought was inappropriate in tone (Exhibit 5, tab 10). Mr. Hoeg reviewed it, agreed with Mr. Patterson, and forwarded it to Ms. Lusk for her to follow up on with the grievor.

45 According to Mr. Hoeg, this was a relatively minor example of the complaints he received about the grievor's communication style. She frequently became defensive, abrupt, and abusive if she felt her knowledge was being challenged. He expected that these communication problems were to be addressed through performance counselling by Ms. Lusk and Ms. Titus, who both confirmed to him that they had spoken to the grievor about her communication style and the need for proper and professional communications.

46 The grievor was told that she needed to be able to communicate her expertise in such a way as to have it accepted. According to Mr. Hoeg, despite attempts to help her develop this skill, she refused training opportunities and all offers of help.

47 Ms. Leonard was the employer's regional director of human resources

from

July 2010 to July 2011. She was familiar with the grievor and the problems with her communication style. She had met with the grievor face-to-face numerous times, starting within two weeks of assuming her position. The grievor had initiated most of these meetings; the rest were initiated by Ms. Leonard. The topic was the same, no matter who initiated them; it was always issues with the grievor's performance and concerns expressed by clients.

48 Ms. Leonard met with the grievor in a meeting she initiated on August 10, 2010. The grievor wanted to explain to Ms. Leonard her working situation. She asked to report directly to Ms. Leonard rather than to Mr. Loyer. Ms. Leonard took the opportunity to speak to her about concerns Mr. Loyer had passed on to her that he had received from clients, managers, and the grievor's co-workers. All had expressed concerns with the grievor's communication style, which they described as abrupt, rude, and unprofessional. The grievor made it clear at the meeting that she was eager to obtain other employment, in particular that she wanted to obtain employment at CBSA headquarters. Ms. Leonard tried to find her a deployment to Ottawa but was unsuccessful.

49 On November 10, 2010, Ms. Leonard was copied on the email that the grievor sent to Mr. Loyer about him leaving early. Ms. Leonard forwarded it to Robin MacKay, the grievor's supervisor at the time and asked her to follow up with the grievor on it. Ms. Leonard wanted to know why she had received the email, particularly since she was surprised by its tone. Apparently, the grievor was unhappy that Mr. Loyer had left the workplace early and had not told her that he was doing so. She admitted to Ms. MacKay that she had not asked to see him and had not checked his electronic calendar to verify his availability. She was directed to make an appointment in the future if she had pressing matters to discuss with Mr. Loyer. Ms. Leonard had no concerns with Mr. Loyer leaving that day; she was his manager, not the grievor.

50 On November 26, 2010, an employee filed a complaint with her manager about a conversation she had had with the grievor with respect to the employee's future work status. She had been accommodated in the workplace and was experiencing anxiety with her work situation and her future with the employer. When the grievor did

not respond to letters that the employee's doctor had sent to her, she called the grievor. According to her complaint, the grievor was agitated and uncooperative with her. The grievor reportedly told her that she was very busy with other accommodations and that she did not have time to read the report concerning the employee since she had been interrupted by the phone. Near the end of the call, the grievor was reported to have said to the employee "[h]ave we finished now?" and to have hung up (Exhibit 5, tab 4).

51 This employee sought help from the employer's local employee assistance program (EAP) coordinator to resolve the situation. The EAP Coordinator intervened with the grievor on the employee's behalf. Her response to the Coordinator was that when people approached her about accommodation, she was to let them know whom to contact. She went on to add that the case they were discussing was difficult because management had extended the employee's employment term. When the Coordinator suggested that everyone in Human Resources needed to work collaboratively to resolve the employee's situation, given that it was multifaceted and involved many Human Resources areas and not just the grievor, the grievor refused. She then emailed Mr. Loyer, stating that the Coordinator was under the misapprehension that others had a part to play in the accommodation process.

52 Ms. Leonard coached Mr. Loyer on how to deal with the grievor and the situation. He replied to both the grievor and the EAP Coordinator, reminding them that Human Resources works as a team but that ultimately, management made the decisions. Members of the Human Resources team, including the grievor, were to provide advice and coordination to the relevant managers (Exhibit 5, tab 5).

53 Throughout this period, Mr. Loyer and Ms. Leonard worked together to find deployment options for the grievor. Ms. Leonard went to her regional director for discretionary funds so that she could offer to pay the grievor's salary until the end of year if someone in Ottawa would hire her.

54 Ms. Leonard was also aware of complaints from outside the CBSA about the grievor's communication style. Health Canada complained about inappropriate emails that she had sent to its employees, for which Mr. Loyer had to apologize

(Exhibit 5, tab 16). Ms. Leonard had to apologize personally to a colleague because of the grievor's communication style.

55 The grievor's personal interactions, particularly with people at CBSA headquarters, negatively impacted her reputation and frustrated Ms. Leonard's efforts to find her alternate employment. For example, Ms. Leonard emailed a colleague in another region (Exhibit 8), copying the employer's director general of labour relations, in response to a request for a copy of a flow chart the grievor had developed. Instead of sending the requested materials, the grievor commented that it was hard to believe her hard work had been forgotten. She went on to say that her hard work had been ignored, which was insulting (Exhibit 8).

56 When Ms. Leonard received a copy of this email, she followed up with the grievor. She reminded her of their discussions about the ramifications of sending angry emails and the repercussions doing so was having on their search for alternate employment. Ms. Leonard told her that copying the Director General of Labour Relations on such emails was not helpful to her professional reputation. The grievor demonstrated a lack of insight and replied that the email had not been angry but the truth, with a hint of hopelessness. According to Ms. Leonard, despite coaching about this type of correspondence, the grievor did not understand why people would be upset with her emails.

57 William Douglas is a border services officer at Halifax Stanfield International Airport. He was also a shop steward and for seven years the co-chair of the airport's joint occupational health and safety committee. In this role, he attended a meeting with an employee to discuss her workplace accommodation at the airport on January 26, 2010. The grievor was there to deal with the accommodation in an occupational health and safety coordinator role.

58 The employee was to no longer work days due to medical condition, at her doctor's recommendation. According to Mr. Douglas, the grievor disagreed with that recommendation and was very aggressive with her opinion, to the point that the employee left the room in tears. Mr. Douglas followed the employee, at which point the grievor yelled at them as they went down a hallway. As a result, the employer's

management team at the airport would no longer allow the grievor to deal with airport employees requiring accommodation.

59 In an email (Exhibit 5, tab 12), the employee complained to the employer's management team at the airport and to Mr. Douglas about how the grievor had treated her. She stated that she considered the grievor's behaviour nothing less than hostile, threatening, and intimidating. This email was forwarded to Mr. Loyer, who apologized for the grievor's behaviour.

60 This was not the only issue that Mr. Douglas had encountered with the grievor's communication style. She emailed the members of the Occupational Health and Safety Committee a set of "LAB1070" report forms (which are used to report the results of an accident investigation), demanding they be signed. According to her, "HQ [had been] waiting for this particular LAB 1070 for too long ..." (Exhibit 5, tab 12). According to Mr. Douglas, it takes considerable time to complete these forms because the investigation must be completed, and then, the committee must meet and review the report.

61 Mr. Douglas replied to the grievor that the paperwork would be sent to her once it and a proper investigation had been completed. She responded that the accident had occurred in September 2009 and that the investigation should have been completed by then. He was insulted by being told not to waste her time with "unsound verbiage".

He testified that her response had been harsh and unnecessary and that he felt that she had told him to sit down, shut up, and do what she told him. He immediately notified the National President of the Customs and Immigration Union, who raised the matter with Mr. Loyer.

62 In 2016, when Mr. Douglas went on medical leave for an injury unrelated to his work, he expressly told his insurance company not to deal with the grievor directly about anything related to his employment. He explained to the insurer that with her involved, he would not be treated fairly. The insurance company notified the employer of Mr. Douglas's concerns. Despite this, the grievor phoned his insurance company and inquired about his file.

63 Kim Murray was also a border services officer who had worked through the injury-on-duty and accommodation process with the grievor, although she had never met the grievor in person. All their communication was done via phone or email. They were involved in two conference calls after Ms. Murray suffered a workplace injury in 2013 during use-of-force training. After several weeks of physiotherapy, Ms. Murray was still in a great deal of pain. Her physiotherapists organized a conference call, which included the grievor, to discuss Ms. Murray's treatment plan.

64 Ms. Murray described the call as very upsetting. The grievor told her that her pay would be cut off and that she would be stuck-off strength because the payroll office had not received approval of her injury-on-duty leave. The root cause of the problem was that the physiotherapy clinic had not informed the employer that she was continuing with her treatment.

65 The grievor was very quick to blame the physiotherapists, even though because of her DACC role, she knew that Ms. Murray was undergoing treatment. It was her job to notify the payroll branch of Ms. Murray's injury-on-duty leave, which she did not do (Exhibit 9). Eventually, the payroll branch figured out the problem, but it took until June before Ms. Murray was paid; the teleconference had been held in February. During the call, the grievor attacked the physiotherapy clinic. According to Ms. Murray, the grievor was rude, frequently interrupted the physiotherapists, and accused them of being unprofessional. A heated discussion erupted about where the physiotherapists had sent their weekly progress reports.

66 According to Ms. Murray, the grievor accused Ms. Murray's treatment team of allowing her to dictate her recovery plan and her return to work. The grievor attacked everything others said on the call, as if, in Ms. Murray's words, "they were lying to her". After the call, Ms. Murray noted a change in how her physiotherapists treated her; they were cold and distant towards her, so much so that others commented about it to her.

67 By the time the second call occurred on April 10, 2013, Ms. Murray was so upset and scared of the grievor as a result of the first call that she had her husband, union representative, and EAP representative all present. For that call, the grievor was

polite, considerate, and compassionate.

68 Audrey Elms worked with the grievor. She was the member of the Human Resources team in the Atlantic Region responsible for staffing at the relevant time. According to her evidence, their jobs often overlapped, even though they reported to different people. On June 19, 2013, Ms. Elms emailed her supervisor, Ms. Lusk, and the grievor's supervisor, Ms. Titus, to complain about an incident that had occurred with the grievor. Ms. Elms' intention was to prevent this type of incident from recurring, as it had been witnessed by an employee who reported to her.

69 The crux of this incident was the grievor's reaction to an employee being placed in a position with which the grievor did not agree. Ms. Elms described the grievor's reaction as involving rage and anger. This led to a discussion of who had advised the region's managers that they could select whom they wanted from the regional placement list. The grievor demanded to know who had done it, and when she found out that it had been Ms. Elms, according to Ms. Elms' testimony, the grievor became enraged and said that she knew it had been Ms. Elms. She then left the office, only to return shortly after and accuse Ms. Elms, in front of the other employee, of being unethical. Other members of the staffing and Labour Relations teams had told Ms. Elms that they were afraid of the grievor, and now that an employee had been subjected to this behaviour, Ms. Elms felt obligated to complain about the grievor's behaviour, which is why she sent the email (Exhibit 5, tab 7).

70 Ms. Waples was the manager of labour relations between February 2012 and April 2013 and was the grievor's direct supervisor during this period. She set the grievor's performance objectives for 2012-2013 and assessed her performance based on these objectives and those that CBSA headquarters had set for the DACC position and the PE-03 classification.

71 As part of this process, the grievor's verbal persuasion and active listening skills were identified for development. She had very specific subject matter expertise, but it was important that she be able to communicate her knowledge to clients. She had to be able to explain their mutual roles and obligations, which required tact and discretion.

72 The grievor's performance deficiencies in these areas were noted in the mid-year performance review conducted in November 2012, in which Ms. Waples noted that the grievor's responses "... may be construed as harsh and/or severe." She also noted that the grievor was making concerted efforts to improve her communication style (Exhibit 4, tab 8).

73 In that review, despite Ms. Waples' expression of concern, the grievor commented as follows:

...

... I can be honest in a nice way and I can be honest in a not so nice way. People are sometimes difficult and refuse to accept their responsibilities...

...You could also say that regardless of the communication style, in the end, I get the message across and the job gets done.

I am not going to change my character or my communications. I don't beat around the bush and am not going to start doing so at this point. I have had much success in my work.

Some people should try my honest, direct style of communications, they might like it.

74 Ms. Waples spoke to the grievor about her response and the need to recognize that her communication style impacted how people perceived her and how she did her job. An example of that impact was an email the grievor sent on March 5, 2013, which was forwarded to Ms. Waples (Exhibit 5, tab 15). In an email exchange with a colleague, the grievor wrote, "[s]ounds like you forgot to bring your sense of humour to work with you today!!!"

75 Despite her efforts to help the grievor improve her communication, Ms. Waples' attempts to resolve the communication issues were unsuccessful. She described the grievor as strong-willed, opinionated, and willing to point out others' errors while refusing to recognize her own. While the grievor might have been receptive to Ms. Waples' coaching in the moment, she never changed. When Ms. Waples stated in the mid-year review that the grievor was making concerted efforts to improve her

communication style, Ms. Waples believed that it was true at the time. But in the end, the grievor did not follow through. The objectives set out for her for the following year, fiscal year 2013-2014, were focused on the same communication issues (Exhibit 4, tab 9).

76 Ms. Titus was the employer's Atlantic Region labour relations manager between May 2013 and August 2015, during which time she directly supervised the grievor.

She was responsible for the grievor's performance, work objectives, training, and personal learning plans and for providing her with feedback. Ms. Titus reported to Ms. Lusk.

77 Early in her time as the labour relations manager, Ms. Titus met with the grievor and asked her what challenges and issues she faced. The grievor expressed her frustration working with clients, who she felt were being difficult. Given that the grievor's previous manager had made comments about her lack of tact and diplomacy in her annual performance review, Ms. Titus felt it appropriate to discuss this at the first meeting as well. She discussed training opportunities in communications with the grievor, such as de-escalating difficult situations and how to persuade people.

78 Over the course of the year, clients, managers, colleagues, and employees contacted Ms. Titus with concerns about the grievor's harsh and abrupt communication style. Each was addressed with the grievor as it was received. Ms. Titus wanted the grievor's understanding of why the conflicts had arisen. One incident had involved the grievor's participation on a conference call to discuss an accommodation case, which had been brought to Ms. Titus' attention via email (Exhibit 5, tab 8). The employee was suffering from a serious illness, and his wife had just been diagnosed with one too. Local management wanted to discuss options for the employee with him, including possibly returning to work.

79 The Local Superintendent felt that the grievor had been disrespectful and unprofessional towards the employee. She referred to another employee who had just died and compared the two cases. She asked the employee why he wanted to return to work if he was sick and told him that it was just about money. The Superintendent felt

that this comment completely negated the employee's true desire, which was to ensure that his family was taken care of, but in the grievor's eyes, he was just being greedy.

80 Ms. Titus discussed the situation with Ms. Lusk and with the others on the call. She then counselled the grievor to keep her opinions out of her dealings with the files and to keep her judgements to herself. Similarly, Ms. Titus counselled her that a more collaborative approach was required when dealing with a situation such as Ms. Murray's. Ms. Titus explained to the grievor that her role was to mitigate the reluctance she encountered in her job and not to aggravate situations. The grievor was very upset by these discussions, but it was very important to make her understand that employees had to feel safe when interacting with her and that they should not be distressed by the interaction with her.

81 In January 2015, an employee involved in an accommodation process took offence at how the grievor referred to her during a meeting to discuss the employee's accommodation. The grievor allegedly commented that the employee had self-diagnosed; she was also upset by the grievor's reference to building a case against her. In her email to Ms. Titus (Exhibit 5, tab 11) complaining about the grievor's behaviour during the meeting, the employee referred to the grievor's disapproving body language and unprofessional behaviour, which the employee described as unacceptable, unprofessional, and unsettling.

82 After receiving this email, Ms. Titus met with the grievor and asked her about the specific terms mentioned in the employee's email as well as the reference to building a case. Following that, Ms. Titus met with the others present at the meeting, and then again with the grievor, to provide her feedback on the meeting from a performance point of view. She cautioned the grievor about her use of certain terms and how people perceived them as offensive, particularly the reference to building a case.

83 At the grievor's mid-year review, Ms. Titus addressed her concerns with the grievor's communication style. She told the grievor that she had to avoid subjective, anecdotal commentary that could be misinterpreted. She also identified areas for the grievor to improve, including her persuasion skills. She provided the grievor with

examples of situations in areas that had previously been identified as needing improvement. Ms. Titus stressed to the grievor that managers had the right to disagree with her advice even when she was accurate and that she had to be able to persuade them to follow her advice instead of lashing out at them.

84 At that review, the grievor raised reclassifying her position. According to Ms. Titus, the grievor was frustrated because she thought her position would be reclassified, which had not happened. She told Ms. Titus that she had been lied to about the reclassification, just as she had been lied to about being transferred to headquarters. She told Ms. Titus that people in the Atlantic Region had criticized her from the start and that she was building a case against the CBSA. Ms. Titus testified that she attempted to define a way forward but that the grievor was unwilling to change. The grievor stated that she provided accurate advice even if it rubbed people the wrong way and that she was hard to get along with; that was who she was, and she would not change.

85 At that point, Ms. Titus reminded the grievor that the employer had expectations of her performance and that if she failed to meet them, she could be terminated, which Ms. Titus clarified was not disciplinary. At that point, the grievor stood up, said she would not take this, and stormed out.

86 Ms. Titus conducted the grievor's year-end performance review for fiscal year 2013-2014 by telephone as by that time, the grievor was teleworking from her home, at her request, because of the work environment. The telework was initially an interim arrangement while the employer awaited medical information to support the grievor's request, which was eventually formalized. True to her communication style, according to Ms. Titus, the grievor did not request telework; she informed the employer that she would be teleworking.

87 Medical notes were submitted to support the grievor's telework demand (Exhibits 12 and 13), but the employer had concerns with the security of the files she was working on. On September 10, 2013, the grievor was in the office; she had stormed out the previous day after making an outburst on how the employer was handling her telework demand. According to Ms. Titus, the grievor mentioned a letter from her lawyer

and needing additional time to resolve the outstanding issues related to her telework agreement. The employer finally received a letter from the grievor's doctor on March 7, 2014, outlining the accommodation requirements (Exhibit 19).

88 According to Ms. Titus, the employer could have implemented in the workplace the accommodation requirements set out by the grievor's doctor, who had been specific that face-to-face interaction with specific people in the workplace had been a major contributor to the decline in the grievor's health. This could have been accommodated by relocating her. Regardless, she was allowed to telework until July 7, 2014.

89 On June 30, 2014, the employer received another medical note (Exhibit 20), stating that the grievor was not to return to the workplace on July 7 as scheduled. It was accompanied by the grievor's request for an accommodation based on physical or mental disability under the *Canadian Human Rights Act* (R.S.C., 1985, c. H-6; the CHRA) even though correspondence received from the grievor's lawyer dated June 15, 2014, stated that the basis of the accommodation was an allegation of harassment and a hostile work environment. According to Ms. Titus, had the employer denied the request, the grievor and her lawyer would have considered it harassment.

90 The content of the 2013-2014 performance review echoed Ms. Titus' concerns expressed in the mid-year review. The grievor continued to have issues with how she communicated with her clients. She was told that even if she was right, the way she communicated the information and her interactions with clients was very important. She was responsible for ensuring that no complaints were made.

91 Ms. Titus acknowledged that clients could be difficult but that part of the DACC role as set out in the job description was to explain, persuade, and influence them.

She advised the grievor that the employer expected her to de-escalate situations that arose with clients, colleagues, and others in the workplace. When a client raised an issue, the grievor's role was to explain and resolve it and not create more issues through her behaviour. Ms. Titus reminded her that the employer required her to interact and communicate respectfully and professionally and that it was to be

taken seriously.

92 At the end of the review, Ms. Titus reminded the grievor that the employer was moving to competency-based rankings in the next performance cycle and that it was important that she improve in the crucial areas identified in the review. Ms. Titus sent notes of the discussions during the call to the grievor for her review and comment. She made no comments.

93 For fiscal year 2015-2016, the employer and the grievor entered into a public service performance agreement (Exhibit 4, tab 10). The mid-year review indicated that she was on track to meet expectations related to her business priorities, but her performance results to date indicated a need for improvement in her service delivery. Ms. Titus and the grievor met to discuss the review, but it turned into a discussion of ongoing disciplinary action against the grievor unrelated to her performance, so there was no performance management meeting, according to Ms. Titus.

94 However, Ms. Titus did make comments on the mid-year review to the effect that an action plan was required, which would include expectations that the grievor would work collaboratively with other members of the Human Resources team, that she would improve her persuasion skills, and that she would reconcile conflicting information and positions to resolve a conflict before it escalated. Improvement was required to ensure that the details in her emails explained decisions or requests to ensure that clients understood the grievor's reasons. Ms. Titus believed that the grievor would be more effective at persuasion if she would explain the context of the advice she provided. Abrupt, sarcastic, and direct comments that clients could interpret as offensive or rude were to be avoided. Competencies expected of a PE-03 in Human Resources were required.

95 As part of the action plan, Ms. Titus identified mandatory training for the grievor, which included a conflict-communication-skills-toolbox training course and a service excellence for colleagues course. According to Ms. Titus, the grievor did not agree that she had communication issues, but since she was being ordered to, she would take the courses. The grievor suggested a negotiation and dispute resolution

course offered by Saint Mary's University, which Ms. Titus approved. The grievor was registered and the course was paid for, but she backed out of it for personal reasons.

96 After 18 months of supervising the grievor, Ms. Titus emailed Ms. Lusk, expressing concern for her personal safety because the grievor was agitated and angry with her all this time. During those 18 months, Ms. Titus had been the subject of several harassment allegations by the grievor and an age discrimination complaint. Ms. Titus was very distressed by all this, and she felt that she had no support. When she had to meet with the grievor in person, she would ensure that other employees were not in close proximity, to ensure their safety. After Ms. Titus's email was sent, the grievor reported directly to Ms. Lusk, but Ms. Titus remained the manager of labour relations and managed the grievor's workload to the extent that it intertwined with the Labour Relations team.

97 Ms. Lusk testified that she started as the Atlantic Region's director of human resources in January 2013. She noted from the start that the grievor had communication challenges. In 2013, at times, the grievor was frustrated with clients and said inappropriate things either in writing or at meetings. Ms. Lusk testified that she spoke to the grievor about these difficulties, about ways of dealing with challenges, and about how management could help her develop the skills she needed. According to Ms. Lusk, initially, the grievor was receptive to having her concerns heard, but this changed.

98 Shortly after the grievor began reporting to Ms. Titus, Ms. Lusk began receiving complaints about the grievor. Ms. Elms expressed concerns to the grievor about her communication style; the grievor did not respond well but aggressively, with anger and frustration, following which Ms. Elms filed a complaint against her with Ms. Lusk (Exhibit 5, tab 7). Ms. Lusk notified the grievor of the complaint and gave her the opportunity to respond to the allegations. She did not respond.

99 Managers and employees made more complaints about the grievor's communication style and conduct (Exhibit 5, tabs 8 to 13), for which the grievor received counselling. All were discussed with her, and at no time did she recognize a problem with her communication. Each problem was with either the client, the colleague, or the employee. All the incidents were noted as part of her

performance reviews.

100 Despite Ms. Lusk's many conversations with the grievor in 2013 on her behaviour and linking it to the action plan, the grievor refused to recognize that her behaviour was inappropriate. The results of a client satisfaction survey conducted around that time were shared with her; they were not complimentary of her service delivery. Ms. Lusk sent the grievor a summary of the discussions of the results (Exhibit 5, tab 14). The feedback clearly indicated to Ms. Lusk that the grievor's behaviour was inappropriate. As part of her action plan, Ms. Lusk now required the grievor to copy her on all the emails she sent.

101 The grievor's year-end performance assessment for fiscal year 2013-2014, conducted by Ms. Lusk, confirmed that an action plan was still required. More work was required in the areas of respectful communication in the workplace with all parties and working more collaboratively and effectively with colleagues and functional leads. The grievor disagreed with the action plan and had her lawyer contact Ms. Lusk. According to the grievor, Ms. Lusk failed to provide her with any evidence to substantiate the need for the action plan, which was harassment, according to the grievor. The grievor noted all this in the comments section of the performance review.

102 The action plan for fiscal year 2014-2015 was presented to the grievor and her legal counsel on December 12, 2014 (Exhibit 4, tab 10, page 133). The original one had been adjusted after Ms. Lusk received the grievor's feedback. The timelines it expressed for the grievor to demonstrate improvement were based on Ms. Lusk's best guess and were adjustable based on the grievor's workload. On her legal counsel's advice, the grievor refused to sign the action plan.

103 This was confirmed in a letter to Ms. Lusk from the grievor's legal counsel (Exhibit 5, tab 11). Ms. Lusk replied (Exhibit 5, tab 10, page 157), clarifying for him that the disciplinary fact-finding that was underway, related to complaints received from WorkSafe New Brunswick about the grievor's behaviour in one of their cases, was independent of the performance management process. The action plan was not disciplinary. Ms. Lusk also confirmed that the grievor was properly classified, despite her opinion to the contrary. Ms. Lusk promised to consider the grievor's feedback on the

action plan.

104 The grievor emailed that feedback to Ms. Lusk (Exhibit 5, tab 10, page 139). She made new demands, was ambiguous, challenged Ms. Lusk's authority, and questioned her right to attend meetings. Ms. Lusk took the time to go through each of the grievor's concerns in detail with her. According to Ms. Lusk, once that was complete, the grievor understood the consequences of failing to meet the action plan, but she did not accept that it was warranted. She felt disrespected.

105 Ms. Lusk and the grievor were to meet weekly to discuss the grievor's progress. These meetings took place via phone on Thursdays, whenever possible. Ms. Lusk testified that she did not explain the consequences of failing to meet the standards identified in the action plan to the grievor at their first teleconference but that she did address them a number of times with the grievor after that.

106 By the time the year-end performance assessment was completed on February 18, 2015, the grievor's overall rating was that further improvement was required. The performance review meeting was conducted via phone. Ms. Lusk identified the areas where work still had to be done. According to Ms. Lusk, the grievor was resistant to technological possibilities and tools. The final rating was "succeeded minus", with improvement required in communication. The action plan continued into fiscal 2015-2016, and the grievor continued to fight all attempts to help her improve in the areas identified.

107 Each time the grievor received an email complimenting her for her services, she sent it to Ms. Lusk, who included it in the grievor's action plan and performance management assessments. Each time they discussed the grievor's performance management objectives, Ms. Lusk noted it in the action plan updates.

108 The six-month review of the 2015-2016 action plan was due on June 10, 2015. Ms. Lusk sent copies of the documents to the grievor in advance of their meeting for her review and feedback (Exhibit 4, tab 11). Their meeting was postponed until July 7, 2015, to allow the grievor sufficient time to review the documents.

109 According to Ms. Lusk, the meeting did not go well; the grievor did not

agree with her assessment. She claimed to have been treated differently and that she was being harassed. When Ms. Lusk tried to address the delay transitioning to the new internal placement program, the grievor blamed the delay on Ms. Elms. According to Ms. Lusk, the grievor refused to accept any responsibility for having had a part in the delay.

110 Ms. Lusk also tried to address the issue of sharing files, which the grievor had demonstrated a reluctance to do with her colleagues. The grievor's response was that Ms. Lusk's concerns were fabrications. When Ms. Lusk tried to address the communications problems still being encountered, the grievor told her to stop harassing her. At the end of the process, the grievor refused to add any comments to the six-month review. She did not sign it and said that she would fight it out at the Canadian Human Rights Commission. She refused the right to challenge the review through the internal dispute mechanism.

111 According to Ms. Lusk, conversations with the grievor related to the action plan were not productive. At weekly meetings, Ms. Lusk took notes, which she then emailed to the grievor. In the beginning, the grievor made no comments, but nearer to the end, she sent many notes contesting everything in the notes. The action plan end date was September 30, 2015, which coincided with the performance management mid-year review.

112 In advance of their discussions, Ms. Lusk sent the grievor the mid-year performance assessment notes. Ms. Lusk testified that she attempted to discuss them with the grievor but that the grievor was not willing to; this meeting also did not go well. When they reached the point of discussing career aspirations, the grievor made it clear to Ms. Lusk that she wanted to move to headquarters. She told Ms. Lusk that she was interested in the ICMS coordinator position at headquarters. She told Ms. Lusk that she would talk to her doctor so that he would recommend transferring her to that position, since she was to have surgery. Ms. Lusk told her that surgery was not a reason for a deployment.

113 Ms. Lusk identified to the grievor an available labour relations job at headquarters. The grievor said that she would follow up and look into applying for it, but

she never did, according to Ms. Lusk. When they moved on to the discussion about the grievor's ability to accept feedback, the meeting derailed, and the grievor again claimed that she was being harassed, according to Ms. Lusk. The grievor called Ms. Lusk manipulative, a liar, and a "sorry-self [sic]". According to Ms. Lusk, the grievor was very disrespectful to her. The grievor claimed she was being picked on, that she was not being assessed fairly, and that Ms. Lusk was making things up, to get rid of her.

114 The grievor requested copies of the complaints filed against her so that she could track the complainants down and address their complaints. According to what the grievor told Ms. Lusk, she had lost friends because of Ms. Lusk; the grievor thought that Ms. Lusk had a vendetta against her. In the end, the grievor was sent the notes of the meeting, a copy of the assessment, and a warning that if improvement was not noted within six months, her employment would be terminated (Exhibit 4, tab 11, page 210). This was a specific notice, even though it is included by reference in the action plan. After it was issued, the grievor contacted Ms. Lusk and asked for her support in meeting the action plan's expectations.

115 Despite the notice, the grievor continued to encounter situations in which her communications were unnecessarily uncooperative, rude, and aggressive, according to Ms. Lusk. According to her testimony, when she provided feedback, the grievor perceived it as harassment and did not correct her behaviour.

116 On December 10, 2015, Ms. Lusk conducted the 12-month review of the action plan with the grievor via phone. This discussion was confirmed in an email to the grievor (Exhibit 4, tab 12). The gist of the conversation and the email was that she had been evaluated as not having succeeded in meeting the action plan's requirements, and consequently, she had three months to demonstrate marked improvement, or her employment would be terminated. The phone call did not go well, according to Ms. Lusk. She believed that the grievor's resistance and inability to accept constructive feedback was impeding her progress, and as a result, she was not succeeding in meeting her objectives and was unlikely to succeed without significant change.

117 The grievor's resistance to the action plan continued into the three-month

extension, during which Ms. Lusk continued to meet with her weekly. The training offer was still available to the grievor, but she did not take it. Ms. Lusk invited her into the office to work with her on the action plan.

118 Despite her opinion of the action plan, the grievor continued to work on the items identified for improvement. For her year-end performance review, she submitted a package of emails to Ms. Lusk to support her view that her performance had met the required standards.

119 Despite her mid-year action plan review that stated that at the 6-month mark, the grievor was on track to succeed on the requirement of working with others, at the 12-month review, she was rated as having failed this requirement. As an example of how she did not succeed in this area, Ms. Lusk reminded her of the time she refused to cooperate with her colleagues to develop a joint non-smoking policy with the Canada Revenue Agency, which shared a building with the CBSA. This incident had caused problems with the relationship between the departments, which had to be fixed.

120 From December 2015 to April 2016, Ms. Lusk and the grievor continued to meet weekly. The atmosphere was not positive between them, according to Ms. Lusk. The grievor was frustrated; their conversations were not productive, and the grievor continued to make harassment allegations against her.

121 The grievor's regular annual performance review was conducted in February 2016 for fiscal year 2015-2016. Her overall rating was "did not meet". Ms. Lusk took this opportunity to tie in the action plan as there remained only one month for the grievor to address her performance issues. In an email dated March 1, 2016 (Exhibit 4, tab 11, page 244), Ms. Lusk reminded the grievor that she had one month to improve, to which the grievor responded that Ms. Lusk had not identified any issues with her performance at their meeting the week before. Ms. Lusk testified that she had provided concrete examples throughout the life of the action plan and that the grievor had had plenty of opportunities to clarify if she had not understood Ms. Lusk's comments or concerns.

122 On April 6, 2016, Ms. Lusk and the grievor met to review the contents of the final action plan review. The written version of the review was emailed to the grievor

before the meeting, for her review (Exhibit 4, tab 11, page 248). Ms. Lusk went through its contents with the grievor, who completely disagreed with it. Later that same day, she received a letter from Calvin Christiansen, Regional Director General, Atlantic Region, advising her of the termination of her employment for reasons of unsatisfactory performance, in accordance with s. 12(1)(d) of the *Financial Administration Act* (R.S.C., 1985, c. F-11; FAA, Exhibit 3).

123 Christian Lorenz testified that from April 2015 to November 2016, Ms. Lusk reported to him. He provided strategic direction and action at the regional level but left the hands-on work to her and the rest of his management team when intervention was required with employees. He testified that he met with the grievor within two weeks of his arrival in Halifax at a grievance meeting and that after that, he encountered her through her DACC work. He had discussions with Ms. Lusk on the grievor and was aware of the ongoing challenges with managing her performance and the challenges related to providing DACC services. He testified that he supported the action plan and that he had been involved in the decision to terminate the grievor's employment.

124 In 2015, Mr. Lorenz commissioned a psychosocial team health assessment of the Atlantic Region's Human Resources branch (Exhibit 21). This arose from the many concerns expressed by and complaints received from members of the Human Resources team about communication issues within the team and in particular, with the grievor.

125 As a result of the assessment Mr. Lorenz decided that the grievor would report directly to Ms. Lusk. After that, he was copied on several messages in which the grievor alleged that Ms. Lusk was harassing her. He did not take direct action when he received them, as according to his testimony, the grievor complained about how she was being managed, along with management roles and responsibilities. The grievor never filed a formal harassment complaint with Mr. Lorenz.

126 Mr. Christiansen was the regional director general of the Atlantic Region. He terminated the grievor's employment. The Labour Relations branch prepared the termination letter for his signature. He was aware of the grievor's performance issues.

He had been advised of the action plan and the performance evaluations before the plan had been implemented. He was advised that the grievor's performance had not improved and that her managers were recommending her termination. He reviewed the performance reviews, the action plan, and the results of the action plan reviews. He met with Ms. Lusk biweekly while she was the acting director of human resources, during which they discussed the grievor's performance issues.

127 Mr. Christiansen met with the grievor once in person with the consultant who conducted the psychosocial team health assessment. They did not discuss the grievor's performance; this meeting was to present to her the results of the consultant's assessment. It was carried out in settlement of a harassment complaint the grievor had filed against Ms. Titus and Ms. Lusk, and it was intended to assess the Human Resources team's overall health. Based on the assessment and the meeting, the harassment complaint was determined unsubstantiated (Exhibit 30).

128 At some point between April 6, 2015, and February 29, 2016, based on the documents Ms. Lusk provided him, including the action plan, the grievor's performance reviews, and her job description, Mr. Christiansen concluded that the grievor was not performing the full range of her duties because of barriers that had arisen in the workplace. In Mr. Lorenz's assessment, the largest deficiency in her performance was the grievor's inability to interact effectively with clients, managers, or employees. Mr. Lorenz reported the grievor's unsatisfactory annual performance review rating to the CBSA's vice-president of human resources after discussing it with the Director General of Labour Relations. All of them agreed that the grievor should be terminated for failing to meet her performance expectations.

B. For the grievor

129 The grievor testified as to her version of the meeting in Moncton, New Brunswick, at which, according to Mr. Boudreault, she had left the room. It was held on November 5 and 6, 2008, and CBSA directors and union representatives attended. Mr. Loyer represented Labour Relations.

130 At some point, the union's president made a comment about the duty to accommodate that the grievor knew was untrue. According to her evidence, Mr. Loyer

and other employer representatives had told her not to make any comments during the meeting as she was there only to meet the union representatives. She testified that Mr. Loyer told her not to comment so many times that she wondered if he thought she had memory problems. Knowing that the comment was false, the grievor looked to Mr. Loyer for permission to correct the president.

131 The permission was not granted. According to the grievor, the room was quiet and very tense. When no one said anything, she excused herself and went to the bathroom. She disagreed that she said anything similar to not being able to take it anymore and that she then left. She admitted that she might have said that it was a good time for a bathroom break and that Mr. Loyer found it objectionable for her to take a break and leave the room. The grievor testified that as she was leaving, everyone started laughing; she did not know why. She did not attend the scheduled dinner that evening for the attendees.

132 The next morning, she sat with Mr. Boudreault at breakfast. He asked her why she had not attended the dinner. He did not mention anything about her leaving the room the day before. The grievor also drove back to Halifax with him when the meeting ended; he did not mention her leaving then either. According to her, at no point did anyone mention that her behaviour at the meeting had been unacceptable.

133 Mr. Loyer called the grievor to meet with him on her return to the Halifax office and asked her if she had really needed to go to the washroom when she left the room. He included this incident on her performance evaluation as an example of her inappropriate reactions to situations.

134 The grievor then addressed the complaint filed against her on November 27, 2009 (Exhibit 5, tab 1). According to the grievor, she was only advised about this complaint a week after Mr. Loyer received it. When she asked him for a copy of the original complaint, she received an email from Mr. Boudreault with his interpretation of the complaint, which did not satisfy the grievor as she wanted to see the original.

135 The grievor responded to Mr. Boudreault's summary (Exhibit 5, tab 1, pages 4 to 6). He discussed her response with an acting Labour Relations Officer, who

responded to the grievor that all was good (Exhibit 32, tab 1). After that, she heard nothing further until she received a call from the complainant's manager, who wanted to discuss the complainant's ability to attend work with the grievor.

136 The grievor testified that she had no ill intentions toward the complainant. She expressed concern to the complainant's manager that she had not been provided with a gradual return to work. The grievor offered to help the manager develop a gradual return to work for the complainant and thought that the entire matter was closed until she heard Mr. Boudreault's testimony in April 2017. The grievor did not think that the complaint was legitimate because it contained some inaccurate information. She did not then or on cross-examination accept Mr. Boudreault's assessment of the situation and insisted that she was communicating effectively with the complainant.

137 The grievor could not understand why she had not been given the opportunity to sit down with the union, the complainant, and her manager to discuss the complaint. She could not understand why she was being left out of the loop, so she emailed Mr. Loyer and asked him about it (Exhibit 32, tab 2). She raised it again during a mediation session with him (Exhibit 32, tab 3).

138 According to the grievor, in Mr. Boudreault's testimony, he indicated that he had received complaints from a superintendent related to completing LAB1070 forms. This was incorrect; the issue was that the Superintendent did not want to sign off the employer's portion of the workers' compensation form for an employee who had been hurt during training. The grievor testified that "to enlighten him", she sent the Superintendent the policy, which indicated that he was required to sign the forms. She also had to enlighten him that since the injury occurred in Newfoundland, the Newfoundland forms were required, not the Prince Edward Island forms.

139 After that exchange, the grievor was called to meet with Mr. Boudreault and was told that she was "skating on thin ice" and that he had received a complaint from the Superintendent about her communication and behaviour. Mr. Boudreault was not interested in hearing her side of the story. He told her to leave the Superintendent alone.

140 The grievor testified that Employment and Social Development Canada

(ESDC) asked her about the accident. ESDC was responsible for processing workers' compensation claims made by public servants. It received the forms, processed them, and sent them to the appropriate provincial workers' compensation board. She tried to obtain the forms but received no support from her manager, which upset her. When she met with resistance from the management at the border crossing, she replied that she was merely the messenger and copied ESDC on the email. She testified that she cannot stop people from reading tone into her emails. She did not know that using all capital letters was inappropriate and that she should not copy people outside the CBSA.

141 The grievor sought Mr. Loyer's assistance in moving forward with her responsibilities in this file (Exhibit 32, tab 4). Despite this incident, she established a good working relationship with the Superintendent and pointed to an email from him dated September 14, 2012, in which he stated he had "[h]ad great guidance ...", as proof (Exhibit 32, tab 5). Further confirmation was in another email, in which the Superintendent indicated that she was a great resource (Exhibit 32, tab 6).

142 On December 2, 2008, the grievor was asked to attend a meeting with Mr. Boudreault and John Dolimount, a superintendent in Saint John, New Brunswick. She testified that she had previously met with Mr. Dolimount's predecessor and had reviewed the outstanding files for his area.

143 During the December 2 meeting, Mr. Dolimount stated that he had four employees requiring accommodation and that only one of them could be accommodated. The grievor testified that she asked him why he was willing to accommodate only one of them. A few days later, Mr. Boudreault called her into his office and, according to her testimony, told her that she had better watch herself. Mr. Dolimount had filed a complaint against her as a result of her question. Apparently, he felt that in her words, she had "put his back up against the wall".

144 In January 2009, Mr. Boudreault asked the grievor to organize the "J" drive, which was the hard drive that housed the labour relations and occupational health and safety files. She testified that he told her that if she deleted anything from it "that he would kick [her]". According to her testimony, at that point, she decided that she would leave the Halifax office. This allegation was not put to Mr. Boudreault on

cross-examination.

145 On March 12, 2010, the grievor emailed Mr. Loyer, advising him that she was taking a personal leave day on March 16. He denied it as the grievor had not provided him the five days' notice required by the collective agreement. When she went to his office to discuss her request and his reasons for denying it, Mr. Loyer drafted a note to file that according to the grievor, he forwarded to headquarters (Exhibit 5, tab 2).

146 At her co-workers' recommendation, the grievor resubmitted her leave request for March 16, this time asking for leave to participate in a selection process. According to her, Mr. Loyer again was uncooperative, and he approved it only after she told him which department was interviewing her (see the emails in Exhibit 32, tab 9). She did not want to tell him anything about the interview for fear he would interfere and affect her chances.

147 The grievor addressed the issue Mr. Loyer raised about her email to him when he left early one day (Exhibit 5, tab 3). He testified that this had embarrassed him in front of his manager as the grievor had copied his boss. The grievor testified that she had had no intention of embarrassing Mr. Loyer or hurting his reputation by sending the email. When she was asked why she had copied his boss, she testified that everyone knew that he was leaving early, and she wanted his boss to know that she did not appreciate being treated differently.

148 As for the concerns made against her on November 26, 2010 (Exhibit 5, tab 4), the grievor testified that she was not aware that it was a complaint. She testified that she had spoken to this employee, who had been looking to relocate with her spouse to the Atlantic Region from the Pacific Region. The grievor testified that no request was made or agreement signed to accommodate this employee and that she was unaware of her medical situation. The grievor also was unaware that the employee had been accommodated in a term position in Halifax as she had not been advised.

149 The grievor found out about this situation when the employer's EAP coordinator told her that the employee would contact her. When the grievor did eventually speak to the employee, she told her that she would be accommodated if medically required but that the grievor did not know where. The grievor then contacted

the employee's supervisor in the Pacific Region and discussed her case.

150 The employee would not accept the grievor's answer, according to the grievor. She described the grievor as agitated, which the grievor denied; the grievor testified that she had been busy and that she had not had time to repeat herself. Following her meetings with the employee, the grievor asked the EAP coordinator not to advise employees to contact her for accommodation. The EAP coordinator had taken accommodation training and knew that the process was that employees were to contact their managers with accommodation requests and that the managers, not the employees, were to then contact the grievor with them.

151 In February 2011, audio testing was required of five CBSA employees in Charlottetown, Prince Edward Island. According to the grievor's evidence, two of the managers responsible for these employees contacted her complaining about the Health Canada nurse who conducted the tests. The grievor also testified that the Nurse had created problems by not properly completing the required forms.

152 The grievor contacted Health Canada about the complaints she had received from the managers. One of the nurses there was in the grievor's words "not pleased with [her] email". She did not understand why the nurse was upset, particularly since the grievor had told her that she was right; employees should have forms filled out before going to a testing appointment.

153 She testified that she never expected that this would be raised at the hearing. It was not an issue, in her opinion. Headquarters had directed her to use the electronic form instead of the paper form previously used for testing. She had passed this information on to the managers through the training she prepared. If the managers had improperly prepared the forms and the nurse could not open them on the testing day, it was not her fault. No one knew that the nurse could not open the electronic forms. Health Canada directed people not to use the electronic forms, but CBSA headquarters directed they be used, so what should the grievor have done?

154 The grievor testified that she was also surprised to see that the employer's case included the incident between her and Mr. Loyer on using *CLC* Part II terms (Exhibit 5, tab 18). He wanted her to use the terms set out in that legislation, while she

wanted to use the vernacular, to avoid confusion, according to her evidence. This was a very busy time for her as she was also preparing for duty to accommodate training, occupational health and safety training, and the upcoming occupational health and safety audit. She did not have time for Mr. Loyer's semantics.

155 During this time, Mr. Loyer allegedly asked the grievor how old she was because he was under the assumption that he was to have a young team that he could build when he accepted the position. It was clear to her that she was not welcome, and she began looking for a deployment to Ottawa. Ms. Leonard testified that the grievor was to transfer to Ottawa (Exhibit 32, tabs 15 to 22). Everything was moving along then suddenly it came to an abrupt stop. No one could explain to the grievor what had happened. In her opinion, the reason cited, lack of funding, was just an excuse.

156 Ms. Leonard was the grievor's acting director for one year, and according to the grievor, Ms. Leonard never indicated to her that she had received complaints from anyone about her.

157 According to the grievor, CBSA management in Halifax did not welcome her to the CBSA, which is why she actively sought to transfer out of the CBSA either in Halifax or in Ottawa. Proof of this lack of support is found in the emails (Exhibit 32, tabs 23 and 23A) in which the grievor sought the CBSA's assistance in dealing with a difficult manager. Instead, when she tried to file a complaint against the manager, she found out that a complaint had been made against her, which management was willing and ready to believe.

158 The grievor spoke about her version of the meeting at the Halifax Stanfield International Airport described by Mr. Douglas. According to her, she did nothing wrong; the employee in question was upset by the content of what she was saying and left the room, contrary to Mr. Douglas' version of the events. He was there as a union representative and to explain his knowledge of the employee's medical condition. The grievor testified that she spoke to two Health Canada physicians before the meeting that day and confirmed the impact working nights has on someone with that employee's medical condition.

159 The grievor testified that she asked the employee to attend a fitness-to-

work evaluation at Health Canada but that the employee refused. Since this was a voluntary option, the grievor then asked her for an opinion from her treating physician. According to the grievor, the employee then became very upset and left the room. She did not chase after the employee.

160 In November 2015, Ms. Lusk contacted the grievor and asked her if she remembered the details of the airport incident. The grievor filled her in and told her that as a result, she had been banned from attending meetings there. Ms. Lusk then took that information and spoke to Chief of Operations Malette at the airport. Ms. Lusk followed up with the grievor to inform her that Chief Mallette had indicated that she was no longer allowed to attend meetings at the airport.

161 The CBSA group at the airport frequently were not in compliance with the *CLC*. According to the grievor, the group's LAB1070 reports were virtually always incomplete and regularly had to be returned. It was delinquent with its monthly meetings and inspection reports. When the occupational health and safety audit in March 2009 identified delinquent reports and minutes as a problem at the airport, the grievor tried to ensure that the CBSA was in compliance with the *CLC*.

162 This was not animosity towards Mr. Douglas, according to the grievor. She had merely done her job. If he had a different opinion, it was news to her. As proof, she pointed out that in April 2014, when she was at the airport, he took her to visit the detector dog. She also sent him a get-well card when he had a car accident. If Mr. Douglas had a different opinion than she did of their relationship, he never said anything to her about it.

163 When Ms. Murray filed her complaint (Exhibit 5, tab 9), the grievor asked Ms. Lusk for written copies of any complaints filed against her. She received only Ms. Murray's. It was news to the grievor that Ms. Titus conducted the fact-finding into this complaint.

164 The grievor provided her version of the meeting that gave rise to Ms. Murray's complaint. According to the grievor, attending the meeting with her were Ms. Murray and Ms. Murray's husband, treating physiotherapist, and case manager from the Workers' Compensation Board of Nova Scotia. The grievor testified that she questioned

the duration of Mr. Murray's treatment at the physiotherapy clinic, to which the Physiotherapist took offence. In her opinion, she had done her job, and there was no issue with her communications. She was never rude to people she worked with.

165 Ms. Murray filed the complaint because the suggestion that she work at the airport instead of in Halifax had angered her. According to the grievor, Ms. Murray had been providing false information to her treatment team to avoid working at the airport, and the grievor cleared up any misconceptions they might have had. She had also attempted to focus the discussion on Ms. Murray's ability to work.

166 The grievor was referred to an exhibit (Exhibit 5, tab 8), agreed that the comments attributed to her during the phone call described in it were accurate, and stated that they were appropriate.

167 The grievor testified that she had looked for possible opportunities for Ms. Murray to return to work. Since Ms. Murray had found driving from Truro to Bedford, in Nova Scotia, too hard, the grievor proposed a position at the Halifax airport, which is midway between them. According to the grievor, Ms. Murray rejected this option immediately because she was not certified on some of the equipment at the airport; however, there was no chief of operations at the meeting to confirm it. The grievor later found out that Chief Malette had told Ms. Lusk that no special certification was required to work at the airport.

168 Ms. Lusk told the grievor that the case was closed, so she did not think it was proper that it was raised as an example at the hearing. If Ms. Murray had had pay problems, the grievor was unaware of them, and they were not her fault, as she had nothing to do with payroll; a workers' compensation claim had been filed.

169 When the grievor became aware of Ms. Elms' email to Mses. Lusk and Titus about their exchange in Ms. Elms' office in June, 2013 (Exhibit 5, tab 7), she took it to the person who is referred to in that email as "MJ", and asked if she was afraid of her. According to the grievor, "MJ" denied having made the comments in the email.

170 According to the grievor's evidence, on the day in question, "MJ" approached her at her desk in the regional office and asked her if there was a problem

with the Regional Placement System (RPS). The RPS was also a DACC and was used to match employees seeking accommodation to job vacancies; the employees' résumés were loaded into it. The grievor questioned "MJ" as to why she had asked her question; "MJ" replied that an employee had been selected for a position that would be available and that the normal selection process had not been followed.

171 The grievor testified that she merely told "MJ" that just because the process was not followed did not mean that the RPS was not working. She went on to tell "MJ" that hiring managers would do whatever they wanted to, no matter what. At no time did she become angry. Following this conversation, "MJ" returned to her desk.

172 Later, while walking to the printer, the grievor had to pass Ms. Titus' office, who called her by name, so the grievor went to her office. Ms. Titus asked her if she had a question about an employee who had just been hired, to which the grievor testified she responded that she had heard that Ms. Titus had hired an employee without following the proper process and that she did not want to be dragged into Ms. Titus's practices. According to the grievor, she did not yell or become upset; she could do nothing about the situation. Immediately after their encounter, Ms. Titus filed a complaint against her.

173 The grievor testified that she was unaware that she had frightened the woman who had witnessed the encounter. She had said or done nothing to frighten her.

174 The grievor also could not understand why Ms. Waples was upset by her. She testified that she was the only person in the Labour Relations office in Halifax that liked Ms. Waples and that at the time, she was doing part of Ms. Waples' job. The grievor testified that she had brought up two issues with Ms. Waples that were hers to deal with but that the grievor had been trying to resolve, which were that mandatory medical examinations had to be completed and that they had to be kept confidential.

175 The grievor testified that she brought these issues up with Ms. Waples repeatedly and that still, confidential medical information was being shared improperly. The issue of confidentiality came to a head when a Border Services Officer acting in a program administration position was granted access to test results.

The grievor testified that she had a problem with it, so she sent an email to Ms. Waples looking for support for her position from management (Exhibit 5, tab 6). In the grievor's opinion, her responsibility to protect medical reports was of the utmost importance.

176 Following this email exchange, the grievor had a discussion with Ms. Waples on her persuasion skills. The grievor concluded that it did not matter what she said to the managers; they would do what they wanted to do. She was being taken off cases because managers or directors did not want to do what she recommended. The mentality at the CBSA was that persuasion attempts were harassment. The grievor admitted that she did deliver strong messages about occupational health and safety, to ensure compliance with the occupational health and safety regulations. When it came to the duty to accommodate, she gave managers the information they required to make informed decisions.

177 The grievor testified about the email exchange (Exhibit 5, tab 15) in which she said to a colleague that it “[s]ounds like you forgot to bring your sense of humour to work with you today!!!” The message had no ill intent, although the grievor admitted that it was possible that the person copied on it might have taken offence. That person complained to Ms. Waples about the message. The grievor admitted that she should not have sent it and that afterward, she regretted doing it.

178 When Ms. Lusk decided to go ahead with changes to how the accommodation process was to be handled, a list of formal accommodation cases for each district or division was sent to the managers that included formal and informal accommodations. Managers were expected to review it for errors and provide the information to Ms. Elms. The RPS was to be modified to include all staffing actions for clearance.

179 Managers contacted the grievor about this initiative and were given clear and specific directions, according to her evidence. According to her, the problem was that the managers would not follow the directions and when problems arose, as the grievor put it, they “came back to bite them”.

180 This is all recorded in an email (Exhibit 32, tab 23A). The grievor testified

that she could not believe that a manager complained about the email's content; she had only been honest. At the hearing, the only fault she could find with the email was that perhaps she should not have copied so many people.

181 In May 2013, the grievor developed medical issues, including weight loss that was not attributable to her physical symptoms. She provided her employer with a series of medical notes indicating that she was fit to telework and that her current work environment was detrimental to her health (Exhibit 32, tab 25). These notes covered the period commencing May 26, 2013. She knew that telework was allowed because the employer had a telework policy (Exhibit 32, tab 24). Despite this, Ms. Titus informed her by email that telework was not operationally feasible and that as of June 30, 2014, her telework arrangement would end (Exhibit 32, tab 26).

182 After the grievor received Ms. Titus's email, she visited her doctor, and on June 30, 2014, she obtained another doctor's note indicating that her health would be negatively affected were she to return to the workplace but that she was able to work from home (Exhibit 17).

183 The grievor became convinced that the employer, Ms. Titus, and Ms. Lusk in particular wanted to end her telework. From the outset, they required her to provide additional information repeatedly, when her medical notes should have been sufficient. Once her telework was approved, the equipment she required for her home office took months to obtain. At one of her weekly reviews with Ms. Lusk, the grievor was asked if her physician would allow her to return to the workplace because if she did, she would have a better chance of meeting the employer's performance expectations. She testified that she would never allow that to happen. She would never return.

184 The grievor preferred to telework rather than go on sick leave. When she was advised in June 2014 that her telework agreement would end in July, she obtained legal counsel, who contacted the employer and demanded that the telework continue due to the ongoing harassment in the workplace from which the grievor was suffering. Ms. Titus responded to this claim on the employer's behalf. She demanded that the grievor substantiate her claims with additional information and details, to allow

management to initiate the proper investigative response (Exhibit 18).

185 The grievor was allowed to continue to telework, temporarily. A threat-risk assessment of her home was to be done, and the required security equipment was to be provided. The assessment was not conducted until November 28, 2014, one year after she had started working from home. Two follow-up requests for the security equipment had to be made before she received it. According to her, the stumbling block must have been Ms. Lusk, because Ms. Titus had told her that working from home was a good thing since it allowed her to work weekends.

186 According to the grievor, Ms. Titus agreed with her that clients could be difficult and had told her as much. Ms. Titus had also told her that she could not believe the amount of work the grievor was responsible for or carried out. The grievor testified that Ms. Titus was “amazed by [her] ability to recall and manage complex cases with a variety [of] characters.” The complaints against her arose when in managing these cases, her recommendations were not in accord with what the managers wanted.

187 The grievor testified that she provided only recommendations to managers, not directions. They complained about a harsh and abrupt tone in her conversations, which did not exist. She testified that she is direct and that she would not change her manner for anyone. According to her, only Ms. Murray made a written complaint about her communications. Given the number of her interactions, the grievor did not think that one complaint made a bad track record.

188 The grievor’s performance reviews show that her director understood the nature of her responsibilities and the need to communicate forcefully to ensure compliance with the employer’s occupational health and safety obligations. When communicating about an accommodation need, the grievor tried to develop a solution with the parties, not raise a conflict. She never considered herself hard to get along with; she responded to requests and had pleasant conversations with many managers, and in general, she enjoyed her job.

189 She did not escalate issues and did not understand why in her performance review Ms. Lusk felt the need to tell her that the employer expected that she would

de-escalate situations (Exhibit 4, tab 9, page 99). The grievor denied ever having escalated an issue. After all, her job was to resolve issues. Rather than escalating matters, she warned managers against escalating issues. Even when it was obvious that an issue would escalate, managers ignored her urgings, and problems arose.

190 That was the case in Saint John in April 2014, when an employee in the call centre there requested accommodation in the form of telework. The employer had received a medical note with insufficient information, so the grievor had prepared a letter to the Physician, requesting specific information. The Physician responded, but the Manager and Chief of Operations in Saint John were not satisfied, so the grievor sent the Physician a second letter. In the second response, the Physician provided the employee's diagnosis.

191 The grievor testified that she told the Manager and Chief of Operations that the Physician was at a loss to respond to the second letter because he had already responded to the questions in the first letter. They were not satisfied with this information and demanded that the grievor send the Physician a third letter; she disagreed. She wanted nothing further to do with this matter and went to Ms. Titus for assistance. She was told that she required negotiation and persuasion skills (Exhibit 4, tab 9, pages 103 to 105).

192 The grievor encountered many difficulties and challenges teleworking because of the demands Ms. Lusk put on her. Of particular note was the care and control of the files the grievor was working on (Exhibit 32, tabs 32 to 35). Ms. Lusk wanted key documents in the office files flagged. The grievor did not work this way and tried to explain this to Ms. Lusk, who was unwilling to listen. Ms. Lusk wanted documents flagged and tabbed and a chronology prepared on key events for each file. Each key document was to be identified on a list of documents. Preparing the chronologies significantly increased the grievor's workload; she prepared them in her spare time.

193 Eventually, the grievor asked the unit assistants to tab and flag files when they received them from her so that she would not have to do it. When Ms. Lusk found out, she directed the grievor to do it herself. The grievor then emailed the assistants,

advising them that Ms. Lusk had chastised her for not tabbing documents (Exhibit 32, tab 34). She emailed them to let them know how the tabbing was to be done.

194 Ms. Lusk also interfered with how the grievor maintained her files. She did not want files duplicated, but the grievor had to sometimes send the same document to the same manager a number of times, and each time, she kept a copy on the file. This was her way of tracking things. This time, the grievor did not mention Ms. Lusk's file management requirements to the assistants.

195 The grievor testified that her performance was never off-track. She was never bored and never made sarcastic or inappropriate responses, as indicated in her performance reviews (Exhibit 4, tab 10, page 117). She fulfilled her duties, responded to clients' needs, and met the requirements of her position.

196 During work hours, the grievor carried out her work and was available, but she was very annoyed when Ms. Lusk contacted her outside work hours, which she expressed in her email to Ms. Lusk on January 23, 2015 (Exhibit 4, tab 10, page 161). That day at 4:47 p.m., Ms. Lusk had copied the grievor on a message that she had sent to the grievor's lawyer indicating that the grievor's position was properly classified. In the letter, she also addressed the reasons for the action plan. She was not happy with the grievor's response. The grievor testified that she felt depressed because she could do nothing to make Ms. Lusk happy.

197 The grievor responded that Ms. Lusk had sufficiently harassed her during working hours and had managed to poison her home environment. She disputed the need for the action plan and insisted that Ms. Lusk leave her personal space alone (Exhibit 4, tab 10, page 161).

198 When the matter was discussed as part of the annual performance review process, the grievor and Ms. Lusk got into a heated discussion, which Ms. Lusk recorded in the notes of the review (Exhibit 4, tab 10, pages 165 and 166). The grievor denied threatening Ms. Lusk, as was recorded in the minutes. She emailed Ms. Lusk (Exhibit 4, tab 10, page 169), advising her that she would not sign the action plan.

199 Nor did the grievor sign her year-end assessment for 2015-2016 (Exhibit

4, tab 11, page 183). She asked for the specifics of what she had not accomplished and was not provided anything. She had completed all her assignments and had performed her duties as required. She needed Ms. Lusk to pinpoint what she was dissatisfied with.

200 The grievor interacted occasionally with the rest of the Labour Relations team when their files overlapped, so she had demonstrated the teamwork required. She responded to emails in a timely and inoffensive way. She was happy to help the new labour relations officers and enjoyed developing these new relationships. She even asked the other members of the Labour Relations team if they thought she was a team player, and no one reported any issues to her.

201 The grievor testified that she did her best to provide managers with the information they needed. The Human Resources survey mentioned in her performance review (Exhibit 4, tab 11, page 183) was performed at her insistence and after her repeated requests. The interpretation of the results she was provided with might have indicated otherwise, but they were not to be trusted since she was denied access to the raw data, and Ms. Lusk's interpretation could not be trusted. The grievor's access-to-information request for the raw data also proved unfruitful. According to her, she had good relationships with all her colleagues, management, employees, and labour relations teammates. Ms. Lusk described her as a reactive person (Exhibit 4, tab 11, page 183) only because Ms. Lusk knew how to provoke her and make her react.

202 The situation that Ms. Lusk described as "high profile" (Exhibit 4, tab 11, page 184) had nothing to do with Ms. Lusk; the grievor questioned why she would have had involved Ms. Lusk at all, let alone why she should have concluded that this file was any more high profile than any of the others she had handled. Only Ms. Lusk's ignorance made the file high profile.

203 The case in question was about a security incident in Moncton, which had been processed as a workplace injury rather than as a security incident. The grievor testified that she had sent the LAB 1020 forms to Labour Canada and had copied the functional lead at headquarters, but that she had not copied Ms. Lusk.

204 When Ms. Lusk found out about the incident, she contacted headquarters to determine that the grievor had followed the appropriate procedure, which she had.

The grievor questioned why she needed to add the extra step to determine whether the case was high profile and whether Ms. Lusk needed to be informed; she treated it as she would have treated any other workplace injury case. According to the grievor, had she followed Ms. Lusk's reasoning, she would not have followed the employer's procedure.

205 From that point on, Ms. Lusk insisted on being copied on emails. She then continually sent reminders to the grievor, according to her evidence, including an email exchange (Exhibit 32, tab 40, pages 1 and 2). The grievor could not understand why Ms. Lusk insisted on sending her so many reminders to copy Ms. Lusk on correspondence she sent out to managers, headquarters, and her colleagues. All her emails required Ms. Lusk's approval even though, according to the grievor, Ms. Lusk did not understand the occupational health and safety processes in place. Her lack of understanding caused delays in filing reports, which were time-sensitive.

206 One example of such a delay involved a memo that the grievor wrote to Ms. Lusk about offices that were not compliant with the occupational health and safety regulations. According to the grievor, all that Ms. Lusk had to do was approve the grievor's memo for release and support the grievor's action plan with management. Instead, Ms. Lusk waited a month before responding that she agreed with the grievor's approach (Exhibit 32, tab 42). The grievor was disappointed at Ms. Lusk's lack of support for her work.

207 The grievor found it difficult to complete the environmental scan she was ordered to complete because no tool was readily available that she could use. She asked Ms. Lusk if she would receive any feedback from management once she had completed the assignment; she received none. After that, when Ms. Lusk told the grievor that she needed to be more proactive, she asked in an email for examples of how she was expected to do that.

208 When the draft environmental scan report was completed, the grievor sent it to Ms. Lusk without the statistics attached for editing. Ms. Lusk refused to look at it until it was completed. The grievor testified that she had merely tried to safeguard confidential material and that the work was done. She would always share this material

with other labour relations officers who needed it. It was her job to safeguard confidential materials and to ensure that deadlines were met, which is exactly what she had done. According to the grievor, this was just another example of Ms. Lusk meddling in her files and causing unnecessary duplication. (Another example can be found at Exhibit 32, tab 47.)

209 The employer replaced the RPS, which the grievor used in her DACC role. She expressed her concerns, attempted to keep it going, and was very disappointed when she did not succeed. According to the grievor, her attempts to keep it going were noted in the action plan results as being uncooperative when she had just tried to show management the error of its decision (Exhibit 32, tab 45, page 3).

210 National headquarters had implemented a replacement for the RPS that according to the grievor resulted in employees being referred for jobs for which they were not qualified. The new system caused problems for DACCs in other regions as well. Eventually, headquarters advised the DACCs that the new system was to be scrapped and that each region was to develop its own system; the grievor suggested that they revert to the RPS.

211 Despite Ms. Lusk's allegations that the grievor did not share information with her, according to the grievor, there is proof that she did share it. Ms. Lusk is reported to have advised the grievor that she had provided a good briefing to management on one employee's return-to-work situation (Exhibit 32, tab 49). The grievor copied Ms. Lusk on her email chain with a subject matter expert at headquarters about an employee who had a prescription for medical marijuana (Exhibit 32, tab 50). According to the grievor, Ms. Lusk was unhappy that the grievor was meeting with the subject matter expert and the employee, so Ms. Lusk and the subject matter expert's manager cancelled the meeting (Exhibit 32, tab 51). Despite this, the grievor continued to work on developing a protocol for medical marijuana in the workplace, and she kept Ms. Lusk apprised (Exhibit 32, tab 52).

212 Ms. Lusk expected the grievor to call clients every day, according to the grievor's evidence, which was impossible, given her workload. The clients knew to call

her if they needed her help, so the grievor saw no need to call them and so did not call them. She could not understand how Ms. Lusk could find fault with the brevity of the grievor's emails and at other times complain that they were too lengthy. Ms. Lusk also complained about the tone of the grievor's emails, which were not sharp in any sense but direct and to the point. She answered the questions that were asked of her, according to the grievor.

213 The grievor testified that a technical lead position in the Workplace Integration Program became available in Ottawa and that she had been interested in it. She had been anxious to get out of the Halifax office and return to Ontario, and felt that this option would help her accomplish her goal. According to the grievor, Ms. Titus told her that as long as the manager in Ottawa and Ms. Lusk were involved, there was no possibility that she would ever be transferred to Ottawa.

214 When the grievor asked for a transfer based on compassionate reasons, so that she could be nearer her children, Ms. Lusk refused. When she asked again, this time for medical reasons, since she was to have surgery and wanted to be near her family for support during her recovery, Ms. Lusk again refused. When all else failed, the grievor asked Ms. Lusk's director to move her so she would not have to report to Ms. Lusk. She told Ms. Lusk's boss that she was doing everything possible to make Ms. Lusk happy but that it was impossible and that Ms. Lusk was never specific as to how the grievor failed to meet her expectations.

215 Beginning on December 14, 2015, the grievor was reminded every week that if she did not meet Ms. Lusk's expectations, her employment would be terminated. Ms. Lusk bullied and harassed the grievor and was out of control in how she treated her. According to the grievor, Ms. Lusk essentially had to meet her performance objectives by controlling the employees she managed. The grievor testified that she was being controlled daily and that she did not know what to expect next. She could not control how her communication style was perceived. She did not understand what Ms. Lusk meant by brevity causing client confusion. She did not deliberately try to offend the people she worked with regularly. She did not disclose her communication style and preferences when she was hired. She did not use foul language in her communications, as is clear from the list of performance deficiencies

(Exhibit 4, tab 11, page 214).

216 The grievor admitted that she was firm and direct in her communications, particularly when it came to ensuring that deadlines were met. She was very thorough and met her deadlines; management often missed its deadlines. She also carried out her duties very thoroughly. In her words, she could not have been more thorough, and yet Ms. Lusk was never happy with her performance. The grievor testified that she was never critical of clients and that she had solid and friendly relationships with many of them, with the “exception of a few who posed challenges to [her] for their own personal reasons”.

217 The grievor had stated a preference to work alone, and for this reason, Ms. Lusk accused her of not being a team player. The grievor pointed to emails (Exhibit 32, tab 46) as proof that she worked collaboratively with her colleagues, contrary to Ms. Lusk’s statements that she did not work actively with the Labour Relations team. Furthermore, the grievor copied senior management frequently on emails, especially when lower-level managers did not cooperate with her in completing her assignments. As each issue was dealt with and managed, another would come up. As time went on, she expressed her concerns for her continued employment. She was desperate to protect her job.

218 The grievor was not comfortable with innovations that changed how she worked, such as posting policies on a wiki (a collaborative database or website) rather than leaving them on the employer’s intranet. It was difficult for her to accept changes when she did not understand the need for them. She could not adapt to changes she considered irrational and pointless, such as eliminating the RPS, and she expressed her concerns to those around her.

219 When she did try to fall in line with the changes, the grievor’s efforts were never enough for Ms. Lusk. For example, when the grievor sent a general email to managers and referred them to the wiki with the occupational health and safety information,

Ms. Lusk criticized it because the grievor did not include the link to the wiki (Exhibit 32, tab 76). According to her evidence, at this point, the grievor could take no

more, so she emailed the CBSA's executive vice-president, complaining about Ms. Lusk's pettiness (Exhibit 32, tab 77).

220 When the grievor emailed the excluded and unrepresented managers in the Atlantic Region offering to answer any questions about her role, Ms. Lusk directed her to stop sending such emails (Exhibit 32, tab 78). She admitted that the email might have been too general, but having to ask for Ms. Lusk's permission to send emails to management meant that she could no longer do her job.

221 The grievor testified that she was frustrated with Ms. Lusk. In the grievor's estimation, she was exceeding her performance expectations. She was prepared to reach out to the ICMS for assistance with Ms. Lusk and eventually did. The more the grievor did to please Ms. Lusk, the more demands Ms. Lusk made of her.

222 When the grievor's frustration with the travel approval process peaked, she contacted the ICMS coordinator. She believed that time was running out for her, and she wanted someone to intervene between her and Ms. Lusk. When she had problems with a colleague, she reached out to Ms. Leonard and Patti Bordeleau, who was then the CBSA's director general of labour relations (Exhibit 8, page 3). All she received was an angry response. The same pattern recurred in the situation with Ms. Lusk. Despite this, the grievor continued to hope that a transfer to Ottawa would materialize.

223 Eventually, the grievor filed a complaint against Ms. Lusk with the Public Service Integrity Commissioner about the treatment she was enduring at Ms. Lusk's hands. The response the grievor received stated that it was not a part of the Integrity Commissioner's mandate, so the file was closed. After that, the grievor did not follow up any further or file any other complaints against Ms. Lusk other than to grieve her termination.

224 When her first email to the CBSA's executive vice-president about Ms. Lusk went unanswered, the grievor sent another (Exhibit 32, tab 113), this time pleading for the vice-president's intervention. What Ms. Lusk considered coaching emails, the grievor considered interference in her work.

225 Ms. Lusk would also order the grievor to do things that were not part of her job, such as scheduling “category III” medicals for officers and recruits. This frustrated her even more since this became her third job. She was responsible for the DACC function, the occupational health and safety function, and the scheduling function, which should have been done by a clerk since the grievor had been hired only as the DACC. She expressed her frustration to Ms. Lusk and other managers at several levels, including the senior level. Despite this, Ms. Lusk continued to add demeaning tasks to her workload.

226 The grievor did not like the assignments that Ms. Lusk gave her and received no relief from them. Regardless of the fact that two of them were outside her area of responsibility, the grievor had no option but to continue to perform all three because of Ms. Lusk’s insistence. Many were labour intensive, and the administrative assistant should have done them, as they were her responsibility. It was not possible for the grievor to carry out both her two jobs and the administrative assistant’s job at the same time.

227 When Ms. Lusk was not assigning the grievor work that was not within the scope of her job description, Ms. Lusk was busy doing the grievor’s job of answering occupational health and safety requirements inquiries. One example of this, which is also an example of the confusion caused by Ms. Lusk’s requirement that she be copied on all emails to managers, occurred on April 24, 2014 (Exhibit 32, tab 124).

228 Ms. Lusk received an inquiry about testing for certain officers. The manager had previously asked the same question of the grievor. Ms. Lusk responded and sent a copy of the response to Ms. Titus and the grievor. The grievor was concerned by the whole email exchange, particularly since Ms. Lusk had provided the wrong information.

229 According to the grievor, Ms. Lusk repeatedly tried to control her and her communications. She was frustrated by the level of control and felt that Ms. Lusk was harassing and bullying her, especially when certain emails were sent (see Exhibit 32, tab 127). Attached to that email was another that Ms. Lusk wanted to discuss with her as an example of the grievor’s sharp communications. The email that Ms. Lusk took

offence to simply gave directions to a manager. It was direct and to the point, not offensive.

230 Ms. Lusk demonstrated that she was manipulative and childish in an email exchange with the grievor in which they argued over where the grievor was located when she received an email (Exhibit 32, tab 129). This was so childish that the grievor forwarded it to one of the region's senior managers as proof of the treatment she was receiving at Ms. Lusk's hands.

231 Ms. Lusk also interfered with the grievor's career at times. One time was when an employee at the Halifax Stanfield International Airport made a complaint against the grievor. Ms. Lusk did not forward the grievor's response to the employee to the director general, labour relations, at headquarters in Ottawa (Exhibit 31, tab 131).

232 The grievor did not accept that she needed to be on the action plan. When as part of it, Ms. Lusk asked her to provide a self-assessment, the grievor copied Ms. Lusk's director, who was handling the grievor's harassment complaint (Exhibit 32, tab 136). A number of other emails were attached in which clients had recognized her for the service she had provided to them.

233 Ms. Lusk frequently interfered with the grievor's work and required changes to documents without justification, as is evidenced in her comments on a document about annual occupational health and safety meetings (Exhibit 32, tab 140). Ms. Lusk regularly monitored the grievor's communications with clients to ensure that they complied with her communications standards (Exhibit 32, tab 141).

234 By May 2015, Ms. Lusk no longer complained to the grievor about the tone of her communications. According to the grievor, Ms. Lusk complained about the content and that she was expressing her frustrations to her clients and colleagues. She also copied Mr. Lorenz on emails she sent to the grievor; so did the grievor on emails to Ms. Lusk. In May 2015, Ms. Lusk told the grievor that she was aware that the grievor had not been attending Labour Relations team meetings. The grievor took umbrage with this comment and asked if she had missed any meetings. Ms. Lusk replied that none had been scheduled (Exhibit 32, tab 142).

235 The grievor also took offence with Ms. Lusk telling her how to her job. This happened when Ms. Lusk was not satisfied with the grievor's response to a Superintendent who asked about contacting one of his employees who was not at work. The grievor addressed the issue with Ms. Lusk and Mr. Lorenz by email (Exhibit 32, tab 143). She advised Ms. Lusk that she disagreed with her opinion, which was wrong in this case. She reported to Mr. Lorenz that Ms. Lusk harassed her again about not doing someone else's job.

236 The grievor testified that she never understood Ms. Lusk's point about communicating her needs to Ms. Lusk. When it came time for the grievor's mid-year review, Ms. Lusk presented the grievor with a lengthy list of her failures, all of which had to be addressed. Ms. Lusk sent it all in an email, to which the grievor responded that despite Ms. Lusk's efforts to terminate her employment, she enjoyed her job and would continue to look to Ms. Lusk for support to meet these expectations (Exhibit 32, tab 152).

237 After her mid-year review, on October 5, 2015, Ms. Lusk again reminded the grievor that she would be administratively terminated for unprofessional conduct and was given six more months to show a marked improvement. Ms. Lusk told her that the behaviour she had demonstrated in their mid-year review meeting was thoroughly unprofessional (Exhibit 32, tabs 154 to 156).

238 Three areas of focus of Ms. Lusk's criticism of the grievor's performance were how the grievor communicated with clients, the client service she provided, and her ability to work with others. According to the grievor, even though she had no deficiencies in those areas, she was required to copy Ms. Lusk on all emails so that Ms. Lusk could monitor her communications. According to the grievor, the irony was that she spent more of her time answering Ms. Lusk's questions than answering managers. The grievor testified that "Ms. Lusk was constantly questioning [her] and copying managers".

239 The grievor testified that she was the only DACC in the country who had to complete annual environmental scans. These statistical reviews were very time consuming and were yet another job added to her many others. In addition, they were

dependent on deliverables from other CBSA areas, over which she had no control. After the grievor completed the scan for 2015 in December 2015, Ms. Lusk insisted that she complete the 2016 scan within two weeks.

240 The environmental scan was in the grievor's action plan. She did not see why Ms. Lusk required the 2016 scan so quickly after receiving the 2015 scan, so she requested an extension and was granted an additional two weeks. The 2016 scan was completed on January 29, 2016, but Ms. Lusk did not respond to the report until March 3. The grievor did not understand why if Ms. Lusk had not intended to review the scan immediately upon receiving it, she had insisted upon such an early due date. Ms. Lusk caused the grievor undue stress while she tried to complete her two actual jobs (see Exhibit 32, tabs 160 to 163).

241 On March 2, 2016, the grievor received an email from Health Canada about annual audio testing for CBSA employees exposed to high levels of noise in engine rooms. She emailed her lead at headquarters about it rather than Ms. Lusk, as audio testing schedules were a national issue, and Atlantic Region management wanted the testing done more frequently, contrary to the national policy.

242 Ms. Lusk was copied on the email, as directed, in which the grievor supported the Atlantic Region management's request. Ms. Lusk blew everything out of proportion, as if the officers were not receiving their testing. They were; the issue was that management wanted additional testing done. Ms. Lusk did not understand anything about the occupational health and safety field yet always insisted on interfering in the grievor's work. In an email (Exhibit 32, tab 164), Ms. Lusk explained her reasons for interfering and being upset as an issue of governance; the grievor should not have gone directly to Health Canada or headquarters but first to Ms. Lusk, even though the grievor did not report to her.

243 On February 29, 2016, Ms. Lusk emailed the grievor, advising her that she had one month to show sustained improvement and to address the performance issues in her action plan, or she would be terminated (Exhibit 32, tab 170, page 5). According to the grievor, Ms. Lusk told her that she was not meeting expectations, but in the grievor's assessment, she was exceeding them.

244 As a result, the grievor made a harassment complaint against Ms. Lusk about the action plan being imposed. Throughout the complaint's investigation, Ms. Lusk continued to pursue the action plan and to torment the grievor with what the grievor described as frivolous emails.

245 It was important to the grievor that the Board recognize that she had been hired to do one job but that the employer had required her to do two and sometimes three or more and that she was very busy as a result. Ms. Lusk often insisted that the grievor do things and send "fluffy" messages when she was just too busy to send them. One was an out-of-office message for the period during which the grievor was out of the office carrying out occupational health and safety training for managers in March 2016.

246 The grievor asked Ms. Lusk what she should put in the message because she wanted to make sure it was appropriate (Exhibit 33, tab 184). This was not enough for Ms. Lusk; she also wanted to know the grievor's travel plans and her itinerary. On March 22, she sent Ms. Lusk the itinerary for the March 29 training but received no response. She testified that she could not understand the lack of trust, support, and respect she received from Ms. Lusk.

247 The grievor submitted as further proof of Ms. Lusk's interference in her work a series of emails (Exhibit 33, tabs 198 to 207), all of which showed that the complex situations with which the grievor dealt were made more complex by Ms. Lusk's ignorance and interventions. One example was Ms. Lusk's insistence that the grievor develop regional standard operating procedures (SOPs) for injury-on-duty leave even though the CBSA had a national policy on it, as did the Treasury Board.

248 The grievor consulted her team leader at headquarters to determine whether she should proceed with drafting the SOPs. When she finished it, she asked the Team Leader to review it, to see if she had missed anything. When Ms. Lusk found out about this, she contacted the representatives at headquarters. They later called the grievor and told her that they had nothing to add to her work and that they wanted nothing to do with Ms. Lusk's disciplinary plans for her (Exhibit 33, tab 211).

249 The grievor sent the completed SOPs to Ms. Lusk, who sent it to the

Regional Executive Committee for comment. According to the grievor, this was completely unnecessary, so she complained to headquarters about it. Eventually, Ms. Lusk suggested changes to the SOPs, which the grievor made. Finally, on July 20, the grievor thought that the SOPs were done when she received an email from Ms. Lusk stating “[g]ood work” (Exhibit 33, tab 217). On the next and following days, Ms. Lusk wanted further changes made (Exhibit 33, tabs 218 to 220). The grievor testified that she did not so much correct the document as correct Ms. Lusk.

250 The employer conducted a survey of human resources services offered in the Atlantic Region, but the grievor was the only one surveyed twice, according to her evidence. The reason was that she had two jobs. She asked the employer why she had been the only member of the Labour Relations team surveyed and asked for the raw data, upon which the conclusions she had received were based. She never received the raw data even after making an access-to-information application.

251 In August 2013, the employer decided to replace the RPS. According to the grievor, Ms. Lusk told her that a manager had said to remove the RPS, but the grievor thought that it was useful and that Ms. Titus felt the same way. The grievor tried to explain why she was resistant to eliminating the RPS and even went with Ms. Lusk to see the Regional Director General and to explain why the RPS should not be eliminated. However, the Regional Director General’s direction stood.

252 The grievor worked with Ms. Titus and Ms. Elms to transition to a new placement system and pointed to evidence (Exhibit 33, at tabs 25 and 26) of what happened when the RPS was eliminated. She had told management that problems would result, and they did.

253 Additional work was often added to the grievor’s workload without reason or justification. In October 2014, a report was generated about employees with arming restrictions. The report identified only those with permanent restrictions, and management wanted her to report on those with temporary restrictions as well. The grievor questioned why she was doing someone else’s work and why the quarterly report already prepared was not sufficient (Exhibit 33, tab 228 and 229).

254 While work that was not hers was randomly added to the grievor’s

workload, her work was also assigned to other people. An example was updating the quarterly duty-to-accommodate reports to be sent to headquarters. On February 3, 2015, the grievor found out who was the project lead for that reporting, but the grievor never did exactly determine this person's duties. She testified that she helped the project lead set up the system envisioned by Ms. Lusk (Exhibit 33, tabs 229A to 231).

255 In January 2015, the employer began experiencing problems with the transition to the RPS's replacement. According to the grievor, Ms. Elms was not getting back to her in a timely fashion. Things had stalled, and Ms. Lusk blamed the grievor for the delay. In April 2015, Ms. Lusk emailed the Atlantic Region, advising that effective April 15, the region would no longer use the RPS. The grievor spent considerable time and effort trying to get Ms. Elms to do something on the project.

256 The grievor testified that she worked harder than she should have had to in order to make Ms. Lusk happy (see the emails at Exhibit 33, tabs 235 to 236). The grievor testified that she worked tirelessly and that Ms. Lusk's comments on her performance review did not reflect the comments she received in emails from clients (Exhibit 33, tabs 239 to 246).

257 According to the grievor, Ms. Lusk undermined her by doing away with the RPS and by replacing it with an inferior system known as the Internal Placement System (IPS). Her position was that since the IPS was a national system, the RPS could have been retained for regional use. The IPS was eventually removed, and on a March 2016 DACC and resourcing conference call, the grievor and others were advised that the IPS was not working and that the employer was looking for solutions. The grievor suggested the RPS.

258 The grievor was upset that Ms. Lusk emailed the regional managers about the transition from the RPS to the IPS (Exhibit 33, tab 235) since it was not Ms. Lusk's project. Nothing in her email required managers to stop using the RPS, so when the grievor was told to continue using it, she went back to Ms. Lusk to ensure that she was following orders, to avoid having it noted otherwise on her performance review.

259 The grievor testified about an event involving a 1.5-hour training session, which she wanted to offer electronically, while the Moncton office wanted her to attend

in person. She went ahead with implementing her plans to deliver the training. She submitted her travel plans for approval to headquarters in Ottawa and was told to combine the training with site visits, to better use her time and resources. She had no communication with the managers around her in Halifax about her plans.

260 She sent the schedule for the training sessions on October 16, 2014. On October 21, Ms. Titus called a meeting with the grievor and the Senior Occupational Health and Safety Advisor at headquarters, with whom the grievor had already been working, to discuss the training schedule and plans. At that meeting, the grievor was told to work collaboratively with the Advisor (Exhibit 33, tabs 241 to 245). She testified that she had worked collaboratively but was not able to say that others involved in the process did so. Leading up to the planned dates of the training, Ms. Titus continued to harp on the need for collaboration with the Advisor, according to the grievor's evidence. She could have done nothing more to prove her collaboration in the process.

261 Some of the planned training dates had to be cancelled. Ms. Lusk asked the grievor for an update on the status of the training to present to senior management and insisted that it be presented in a table format. The grievor presented it in an email as she was very busy doing two jobs and did not have the time to present it in Excel. According to her, Ms. Lusk knew that she was very busy and had made these demands to add to her already burdensome workload.

262 In September 2015, the grievor and her functional lead from headquarters put together an agenda for his tour of the region for October 6 and 8. On the Friday before the tour was to happen, the grievor met with Ms. Lusk and was advised that her action plan was to be extended for six months. The grievor did not react well to this news, and as a result, she was later told that she was not to participate in the planned meetings or to meet with her functional lead (Exhibit 33, tab 248). She testified that she just wanted to do her job without being harassed or bullied by Ms. Lusk, but it was not possible.

263 The grievor testified that throughout her employment, she assisted managers, superintendents, and her peers across the country. She never kept any of them waiting for information they had requested. Her role was to help people across the

country if they had been unsuccessful in dealing with their cases elsewhere. When she found case law on what she considered relevant topics, for example, discrimination on the basis of family status, she shared them with the management team (Exhibit 33, tab 270A, and Exhibit 32, tab 142).

264 The grievor teleworked from 2013 to the date of her termination. According to her evidence, Ms. Lusk did not want her to telework because in the grievor's opinion, it meant a loss of control for Ms. Lusk.

265 In January 2014, the grievor's doctor wanted her to stop working completely, but she continued to work remotely. On June 30, 2014, she filed a formal request for permanent accommodation in the form of telework for medical reasons (Exhibit 33, tab 303). In addition, she had retained counsel, who sent a letter to the employer on the telework arrangement. Ms. Titus responded on August 13, 2014, and subsequently, a permanent accommodation was approved.

266 Later in August 2014, the grievor was advised that she was to attend workshops in Rigaud, Quebec. She let both Ms. Lusk and Ms. Titus know that she would not fly there and that if she were forced to, she would not attend the workshops. She offered to drive there and claim only the cost of the equivalent airfare, but initially, her offer was denied. Only after she involved the ICMS coordinator at headquarters, where the issue was resolved, was she allowed to drive. She testified that she did not misunderstand Ms. Lusk's question about her reason for visiting Rigaud and that she did not overreact. Ms. Lusk had merely been difficult.

267 The grievor believes that the real reason she was terminated was that she filed two human rights complaints against the employer, one based on accommodation, and one on age discrimination. In addition, she filed a harassment grievance against the Human Resources Assistant, Ms. Lusk, Ms. Titus, and the Labour Relations team. They were all dismissed; informal conflict resolution was used in some cases. The grievor was advised that managing performance was not harassment (Exhibit 33, tab 327). Her response was that she would prove that Ms. Lusk had one goal in mind, following which she emailed Mr. Lorenz, accusing Ms. Lusk of nepotism (Exhibit 33, tab 329). After that, Ms. Lusk extended the action plan for six more months.

268 The grievor asked headquarters and Mr. Lorenz (Exhibit 33, tab 331) for help. When she did not receive any help, she emailed the Executive Vice-president in Ottawa, who asked the Vice-president of Human Resources to respond (Exhibit 33, tab 332). Despite that person's reply that no further response would be appropriate, the grievor continued to copy the Executive Vice-president on emails from Ms. Lusk, which the grievor believed supported her position that Ms. Lusk was harassing her. The grievor testified that she knew she would be fired at the end of the six-month extension she received in October 2015, but she continued her efforts to prove that she was being bullied and harassed by sending emails to the Executive Vice-president (Exhibit 33, tabs 333 to 338, and Exhibit 34, tab 353).

269 On cross-examination, the grievor admitted that she knew when she accepted the position in Halifax that it included occupational health and safety duties as part of the DACC function and that they were not two separate jobs. However, she thought it was under-classified. She testified that she was under a lot of pressure working the two jobs (which she admitted were not two jobs but one) and that she received no support from her managers. She admitted pointing her finger at Mr. Loyer and telling him to loosen up because she did not understand why he was giving her such a hard time (Exhibit 5, tab 2).

270 The grievor also testified that she was intent on getting out of Halifax and finding a position in Ottawa. She asked for personnel selection leave for March 16, 2010, but Mr. Loyer would not approve it until she informed him about the competition. Rather than tell him, she asked for a personal day, which required five days' notice under the collective agreement. Mr. Loyer denied that and asked her if another type of leave would suffice. She did not respond because she did not want to divulge information to him. On March 15, she changed the request to personnel selection leave but did not state that she had an interview. She had consulted with other managers, who had told her that they would deal with such a request that way. The grievor testified that she worked hard to try to return to Ottawa and that all the while, Mr. Loyer was harassing her.

271 The grievor admitted that she complained to Mr. Loyer's boss about him to let her know that he had a communication problem, not her. Ms. Leonard spoke to the

grievor about the email she had sent and told her that this type of communication was inappropriate. She had no idea why anyone from Health Canada would complain about her communications, let alone an email. She questioned why Health Canada would have a problem with her following up to make sure it had completed the work it should have completed.

272 The grievor was referred to an email chain (Exhibit 8), which she had forwarded to Ms. Leonard and had copied to the director general of labour relations. In it, she wrote to a colleague and copied the director general, stating as follows: “It’s hard to believe that my hard work has already been forgotten. It’s one thing being ignored when there’s no merit to acknowledge, but when hard work and dedication to a good product is ignored, that’s just downright insulting.” The grievor conceded that this response was inappropriate and that she should not have copied the director general. However, it was not angry; it was a frustrated email, and she should not have taken her frustrations out on her colleague.

273 The grievor also conceded that senior management had addressed this behaviour as unacceptable and that it had warned her that copying senior managers on such emails was not helpful to her career or her reputation. However, she defended her response to Ms. Leonard as appropriate as she was trying to leave labour relations and was unappreciated, no matter how hard she worked. Despite this feedback, the grievor continued to send similar emails to senior managers, such as when she complained to the CBSA’s executive vice-president about Ms. Lusk in 2016. Despite this, the grievor denied that anyone except Ms. Waples, Ms. Titus, and Ms. Lusk ever expressed anything other than their opinion that her communications were causing her employer concerns.

274 The grievor was referred to her performance review for fiscal year 2014-2015 (Exhibit 4, tab 10). She testified that she became aware only during Ms. Lusk’s testimony that the action plan had been Ms. Titus’s decision. The grievor did not work with Ms. Lusk to develop the action plan but was provided a copy and was given the opportunity to comment, which she did (Exhibit 4, tab 10, page 116). She refused to take training at St. Mary’s University and the Service Excellence for Colleagues course identified at page 115 of the action plan. In the end, she attended both, but reluctantly.

She received training to help with her communication skills from 2008 to the date of her termination.

275 The grievor testified that she did recall telling Ms. Lusk that she was bored at meetings and contradicting Ms. Lusk when she mentioned at the staff meeting that the grievor's duty-to-accommodate mandate was challenging. The grievor denied making outbursts or writing inappropriate emails (as described at Exhibit 4, tab 10, page 119). When Ms. Lusk had concerns with any of her correspondence, she would bring them to the grievor at their weekly meetings, which, however, were dominated by discussions generally related to the grievor's dual mandates.

276 The grievor was aware that the action plan was a legitimate management tool for dealing with employees with performance issues; however, she disputed its use in her case, since she was not off track and was exceeding all expectations. The weekly meetings were not intended to address the action plan but were to review the grievor's work. During fiscal year 2015-2016, the action plan was in place, so the grievor was required to meet and discuss her performance under this guise and to undergo both mid-year and year-end performance reviews.

277 The grievor frequently disagreed with Ms. Lusk's comments on these reviews and did not sign them. She testified that she had no confusion with her role or the files. She agreed with any positive comments. If clients did not agree with the guidance she provided, there was not much she could do but document it. She admitted that at times, she had received positive feedback from Ms. Lusk in emails (Exhibit 32, tab 76). However, in the grievor's opinion, while it was nice to receive it, it was not constructive.

278 The grievor was referred to an exhibit (Exhibit 32, tab 116) and was asked whether she considered her response to an employee appropriate, which read as follows: "Thank you much [*sic*] — not really offering, I've been ordered to do this against my will." She responded that she did not think that the employee would take her response the wrong way.

279 When Ms. Lusk followed up with the grievor about that message and advised her that she should keep her frustrations out of emails to clients, she responded

that that was Ms. Lusk's opinion. She justified her actions by stating that she considered it inappropriate for management to impose menial tasks upon her when she had much more important work to do and that she was within her rights to let people know this. She did not express her frustrations; she made a statement of fact.

280 The grievor was also referred to her exchange with Ms. Lusk (Exhibit 32, tab 146). The grievor's reaction to this email chain was that she had done Ms. Lusk a favour by telling her not to send an unsigned form to ESDC. She described Ms. Lusk's response to her direction as not constructive. Again, according to the grievor, this was evidence that Ms. Lusk never supported her. Everything was always her fault, and she never did her job. Ms. Lusk's involvement in these files was out of the ordinary, and the grievor felt she had to challenge Ms. Lusk or be blamed for the failings in the file.

281 The grievor went over her performance reviews starting from 2009 and conceded that the employer commented in each one on the need for her to improve her communication skills. This occurred despite the positive feedback she received from her clients on the quality of her knowledge.

282 By February 2013, the grievor noticed that her working relationship with Ms. Lusk was changing. She received an increased number of requests for information from Ms. Lusk. The grievor testified that she felt a level of stress in the workplace and that she regularly visited her director or functional lead for support and backup to confirm that she was on track. At this point, she also began experiencing health issues. Still, she remained civil and continued to work well with others.

283 According to the grievor, an action plan is a tool managers use to help employees get back on track with their responsibilities, but in the hands of Ms. Lusk, its purpose was disciplinary. The grievor was humiliated and was given menial tasks. She was told that going over Ms. Lusk's head was a lack of respect for proper governance. The grievor testified that she is open to constructive criticism if it improves a process but that Ms. Lusk was interested only in reinventing the wheel on a daily basis.

284 The basis for the grievor's discrimination claim is that Ms. Lusk was not open to the grievor's initial telework request in 2013 and that she was unable to find a position in Ottawa due to harassment at the hands of Ms. Lusk and Ms. Titus.

285 The first time the grievor requested telework, in August 2013, she did so based on her health and the impact of the work situation on it. She based her request on the employer's telework policy. Ms. Lusk asked for medical information to support the request. The grievor responded that even though it was not required, she would provide it. At no point did she ask for telework as an accommodation.

286 The medical note she provided required the grievor to work from home without specified limitations or duration. The employer asked for more detail, which she felt was pushback, but she provided it anyway. The next note was sufficient, and she began teleworking in September 2013. In March 2014, the employer asked her physician to re-evaluate the need for telework.

287 The grievor encountered delays obtaining from the employer the equipment required to telework. She was told that she needed a secure filing cabinet (even though she maintained only one paper file at her home), a printer, and a scanner. The delays encountered were explainable, and the grievor did eventually obtain the necessary equipment (Exhibit 33, tabs 298 and 298A). In the meantime, she was able to carry out her DACC duties without it. Ms. Lusk was well aware that something was wrong with the grievor; she saw the grievor when she visited the office. The grievor attended training and meetings and went to training sessions when required.

288 In June 2014, Ms. Lusk wanted to end the telework arrangement, so the grievor involved a lawyer. The telework continued when the grievor provided a medical certificate to support it (Exhibit 17). While the telework question was being resolved, Ms. Lusk told the grievor to request sick leave, which she did not like, but on cross-examination, she agreed that it was not discrimination.

289 In May 2015, the grievor requested a transfer to Ottawa based on compassionate reasons. She did not request an accommodation (Exhibit 33, tab 283). She made the request so that she could be near her family while recovering from an anticipated surgery. She attached a letter from her doctor that did not identify any restrictions or any need for accommodation (Exhibit 33, tab 283A). Ms. Lusk eventually advised the grievor that a transfer was not possible for the reasons requested (Exhibit 32, tab 28), but she never mentioned the possibility of a deployment.

290 The grievor's disability did not prevent her from communicating with clients in the way the employer expected her to. She carried out her duties as she normally would have. Her communications with Ms. Lusk were impaired by the harassment and bullying that she suffered at the hands of Ms. Lusk. The increased stress from having to deal with Ms. Lusk impaired her ability to do her job. She adamantly contended that she never had any communication issues before 2013, despite acknowledging that they were mentioned in her performance reviews from before 2013 and that Ms. Waples informed her about it in 2012 (Exhibit 4, tab 8).

291 Mr. Lorenz testified that when he first met the grievor, she was teleworking. The reasons for allowing her to telework were to mitigate issues in the work environment because of interpersonal conflicts involving her and to ensure that the region was able to continue providing DACC services. Overall, Mr. Lorenz met with the grievor four times and might have spoken to her twice by phone.

292 The grievor emailed him about being transferred to Ottawa and about pursuing job opportunities in Ontario, in particular in the National Capital Region (NCR). She told Mr. Lorenz that she was experiencing some health issues and that she would be in a better position to recover from treatment if she were near her family.

293 The thrust of her plan was to move to Ottawa for surgery and to recover. Mr. Lorenz tried to clarify the nature of the grievor's request. Was she looking for an accommodation or a transfer? She was clear that she wanted a transfer. Her doctor's note said that she would undergo surgery and that she would need a recovery period, which is what sick leave is for, but she was not willing to consider sick leave.

294 The majority of the emails that the grievor sent to Mr. Lorenz were related to pursuing job opportunities in the Ottawa area. People ask for deployments frequently and for a number of reasons, so the grievor's actions were not unusual, but Mr. Lorenz did not pursue it on her behalf. Many of the positions she was interested in were promotions, which meant that a deployment would not have been possible.

III. Summary of the arguments

A. For the employer

295 The termination letter (Exhibit 3) specifies in its first paragraph that the grievor encountered performance issues over 24 months, which caused management serious concerns. Despite significant efforts to provide additional training and coaching to help her meet her performance expectations, she failed to demonstrate a substantial and sustained improvement in the identified areas. In fact, despite the training and coaching, her performance deteriorated over three review periods. It is unlikely that any additional training would overcome her performance deficiencies.

296 The grievor was terminated for non-disciplinary reasons under the deputy head's authority pursuant to s. 12(1)(d) of the *FAA*. Sections 209(1)(c), 226(1), 228(1), and 228(2), and in particular s. 230, of the *Act* are critical to determining the Board's role when dealing with non-disciplinary terminations.

297 The Board's role is to assess the reasonableness of the employer's conclusion that the grievor's performance was unsatisfactory. Section 230 applies only to non-disciplinary terminations for performance and requires the Board to assess the reasonableness of the deputy head's conclusion that the grievor's performance was unreasonable. The question to be posed is not whether the adjudicator would assess her performance as unsatisfactory.

298 The deputy head's ability to assess an employee's performance in the workplace is an exercise of the deputy head's management rights. An adjudicator has a very narrow scope of authority over terminations for poor performance of employees in the core public administration. The adjudicator is allowed to intervene only if the employer's assessment of the employee was unreasonable. The adjudicator has no mandate to intervene and assess the appropriateness of the termination (see *Raymond v. Treasury Board*, 2010 PSLRB 23 at paras. 123 and 124).

299 At paragraphs 127 to 130 of *Raymond*, the Adjudicator sets out how an adjudicator is to determine whether the employer's decision to terminate was reasonable. The questions to be asked are as follows:

- Was the employee aware of the employer's concerns?

- Was improvement shown?
- Were efforts made to help the employee improve his or her performance?

300 A decision made in bad faith, arbitrarily, or discriminatorily or that is unrelated to the employee's position cannot be deemed reasonable. To be transparent, the employer is required to convey its concerns about the employee's performance to the employee. Expectations of what is to be met must be clearly conveyed to the employee in a manner and in terms that the employee understands. The employee's opinion that no problem exists with his or her performance is irrelevant to the employer assessing performance, once the expectations are communicated.

301 If any impediment or condition exists that prevents the employee from understanding what the employer has conveyed as its expectations, then the employee must communicate that to the employer, and the employer must be certain that it accommodates the limitations. In this case, the grievor did not have any limitations; she denied the employer's concerns and refused to address them.

302 At paragraph 131 of *Raymond*, the Adjudicator identifies when it would be unreasonable for a deputy head to consider an employee's performance unsatisfactory. This includes the following:

- A supervisor was involved in a bad-faith exercise, which the evidence must demonstrate; the allegation alone is not enough.
- The employee was not subject to appropriate standards of performance, which was not so in this case. The grievor was assessed against and put on an action plan consistent with her job description and employer policy.
- If the employer did not clearly communicate the performance standards that the employee had to meet, the assessment of unsatisfactory performance was unreasonable. This was not so in this case. The grievor was met with many times and was advised of the employer's expectations.

- Finally, if the employee did not have the tools, training, and mentoring required to meet the performance standards in a reasonable period, the assessment cannot be deemed reasonable. The grievor in this case was offered training, which she refused; was mentored by Ms. Lusk, which she fought; and was given 24 months to improve her performance. The employer's assessment was reasonable.

303 An adjudicator does not sit in appeal of the employer's decision (see *Raymond*, at para. 137). The adjudicator's role is solely to assess whether the employer's decision was reasonable. This approach was endorsed in *Plamandon v. Deputy Head (Department of Foreign Affairs and International Trade)*, 2011 PSLRB 90; and *Mazerolle v. Deputy Head (Department of Citizenship and Immigration)*, 2012 PSLRB 6. The Federal Court of Appeal endorsed it in *Forner v. Canada (Attorney General)*, 2016 FCA 136 at paras. 16 to 18.

304 This same approach has been adopted for application to separate agencies (see *Reddy v. Office of the Superintendent of Financial Institutions*, 2012 PSLRB 94; *Gagné v. Canadian Food Inspection Agency*, 2016 PSLREB 3; and *Agbodoh-Falschau v. Canadian Nuclear Safety Commission*, 2014 PSLRB 4). Similarly, this approach is used in the private sector (see *Radio CJVR Ltd. v. Schutte*, 2009 SKCA 92).

305 When the grievor was hired, she was given an offer letter and a job description. That job description states that the job requires considerable interaction with a number of internal and external stakeholders. The classification standard for her position set out the communication expectations from the beginning, and her first performance agreement identified that she had to meet those expectations. Improving her communication skills was identified in her learning plan from the beginning of her employment in 2008-2009.

306 The grievor's performance review for 2008-2009 was balanced and fair. It identified positive and negative aspects of her performance. The fact that she denied that issues existed from the very beginning did not mean that they did not exist. Her reaction to the performance review was itself objectionable behaviour. She stated on

the review that her reactions to workplace events did not affect her work performance. She disagreed that she needed to improve in the areas identified for improvement. Mr. Loyer prepared a briefing note for the meeting with her and discussed them with her.

307 In the 2009-2010 performance review, the employer again addressed the same communication-related performance issues with the grievor. This time, it identified courses for her to help her improve her performance in that area. It identified the performance deficiency and attempted to help her resolve it with training.

308 All the grievor's supervisors testified about their concerns with her service delivery and communication skills. All testified that while she had the technical knowledge required for the job, her soft skills and how she relayed this knowledge were deficient. In 2010-2011, Mr. Loyer prepared the grievor's learning plan, identified more communications courses for her, and added compliance with the Human Resources Communication Covenant to her learning plan.

309 In 2011-2012, the grievor had two supervisors, Ms. McKay and Ms. Waples.

Both identified the need for her to improve her interpersonal communications. On June 19, 2012, the grievor signed her performance review and learning plans, stating that she understood that she was accountable to meet the standard and to comply with the learning plan.

310 Again in the 2012-2013 performance review, Ms. Waples identified communication as a deficiency. The grievor's feedback on the document clearly indicated as follows that she had no intention of making any changes (Exhibit 4, tab 8, page 87):

...

In my communication, I can be honest in a nice way and I can be honest in a not so nice way. People are sometimes difficult and refuse to accept their responsibilities. I am satisfied that in getting the job done, parties involved are thankful of my intervention and parties involved are confident that my intervention will achieved [sic] the desired results.

I guess you could say that I manage situations on a case by case basis. You could also say that regardless of the communication style, in the end, I get the message across and the job gets done.

I am not going to change my character or my communications. I don't beat around the bush and am not going to start doing so at this point. I have had much success in my work.

Some people should try my honest, direct style of communication, they might like it.

311 When the grievor's efforts to improve were clear, both Ms. Waples and Ms. Titus noted them, and yet in Ms. Titus's 2013-2014 review, the issue of the grievor's communication style was again identified and discussed. Once again, she was advised that improvement and training were required. The employer had to take more formal steps at that point to address her performance deficiencies as her communications were negatively impacting programs. When she was told of this, she became aggressive, told Ms. Titus that she was building a case against the CBSA, and stated that she was just hard to get along with. When Ms. Titus tried to discuss the possible outcomes of her continued refusal to address her performance deficiencies, the grievor stormed out of the meeting, yelling, "I'm done ... I'm not taking this".

312 By the fall of 2014, Ms. Titus asked to be removed as the grievor's supervisor; Ms. Lusk took over, even though that would not have been part of her normal role. Ms. Lusk completed the grievor's 2014-2015 performance agreement and review. During this period, the employer introduced a new "Directive on Performance Management" (Exhibit 4, tab 13) in which the time between identifying unsatisfactory performance and terminating employment was to not exceed 18 months unless in the deputy head's opinion, the circumstances justified a longer period. The employer had given her 24 months to avoid termination as the outcome.

313 The grievor's only failing was in one area, but that area, communications, was critical to the success of the programs for which she was responsible. The employer's expectations were directly linked to her job. Ms. Titus recommended the action plan, which Ms. Lusk implemented in fiscal year 2014-2015. It was clearly communicated to the grievor, as were the consequences of failing to meet its objectives.

The problem was that the grievor disagreed with it and refused to help herself.

314 The employer's action plan focused on areas in which it had received complaints about the grievor's manner of communicating. The impacts on service delivery were many, as was evident from the complaints from her clients, Ms. Murray and Mr. Douglas, the complaint about the grievor ranting to a superintendent on the phone about her disciplinary situation and hiring a lawyer, the complaints about sharing her personal frustrations, and the complaints about rude comments, along with issues with several employees. When these examples are considered within the *Raymond* framework, they were all within the core of the grievor carrying out her duties.

315 The employer acted in good faith when it addressed each one. The grievor's communications with her colleagues were also inappropriate. She copied people unnecessarily on emails. She emailed the CBSA's executive vice-president, without explanation. She emailed her supervisor's boss when she was frustrated with him. When explaining to the grievor that she was not to copy the CBSA's executive vice-president on emails, Ms. Lusk tried to use it as a coaching opportunity, but the grievor was just not willing to learn as was demonstrated by the lack of judgment in her communications to that executive vice-president on January 5, 2016.

316 Clearly, the employer acted in good faith. It identified the performance problem and tried to address it, and the grievor then took offence. Ms. Lusk persistently pursued the action plan, offered coaching, and provided feedback and advice. Her emails were not offensive, despite the grievor's responses. At some points, the grievor was disciplined, but for matters unrelated to her performance management situation.

317 Ms. Lusk acted in good faith in her attempts to manage the grievor's performance. Her objectivity was not tainted by animosity or bad faith. She was frustrated with the grievor, but that did not come through in her emails. The grievor demonstrated her frustration via escalating her disagreements with Ms. Lusk to headquarters at every opportunity.

318 Mr. Boudreault and Mr. Loyer both testified that they were concerned about the grievor's reactions when they attempted to address issues with her. The

grievor filed harassment complaints against both of them, as well as a human rights complaint.

Ms. Leonard spoke to the grievor and counselled her that this type of behaviour was not helpful to her reputation and that it would hinder her stated objective of finding a position at headquarters.

319 The grievor's request for a transfer to Ottawa was for personal reasons and was not an accommodation. There were no grounds upon which to grant it, and failing to grant it was not discrimination.

320 Mr. Christiansen was the delegated decision maker. He was aware of the circumstances. He exercised his judgement after consulting Labour Relations at headquarters, as required. The grievor repeatedly testified that she knew her job was at risk if she did not improve her performance. She did not improve it, and whether it was through inability or unwillingness, the outcome would have been the same. She should have been dismissed.

321 As to the discrimination, there is no evidence to support a *prima facie* case of it. Even if the grievor had a disability requiring accommodation, it was provided in the form of telework. Delays in providing a printer or scanner did not amount to failure to implement the accommodation, since the grievor testified that she needed neither to do her job.

322 There has to be a nexus between the disability, if it exists, and the reason for termination. The grievor's evidence was that her disability was unrelated to her ability to communicate. This grievance should be denied.

B. For the grievor

323 Informal conflict resolution with Mr. Loyer was unrelated to the grievor's communications. She questioned whether Mr. Boudreault or Mr. Loyer had problems with her communications during her probation. The only indication that there was such a problem was a notation in the grievor's performance review of an objectionable reaction at a meeting. Indicating that it was a good time for a bathroom break was not objectionable.

324 Ms. Lusk had one goal, which was to terminate the grievor, despite her efforts to avoid it. She exceeded her performance expectations and continued her hard work despite Ms. Lusk's persecution. The grievor provided evidence to show that her communications were appropriate, that her client service was appropriate, and that she completed mandatory training. Her performance reviews demonstrate that she made an effort.

325 The grievor did not receive written copies of any of the complaints filed against her despite requesting them. Each case was dealt with and should not have been brought up at the hearing. As far as the email to Mr. Douglas about the LAB1070 issue, it was abrupt but not inappropriate. Mr. Douglas was not meeting his timelines, which he had to be informed of. The grievor just did her job.

326 The action plan was a tool for discipline, harassment, and bullying. It was imposed as a result of the grievor demanding to telework. It was a way to make her prepare SOPs for programs, which was not her job. When Ms. Lusk was unsuccessful in ending the grievor's telework in July 2014, she concocted the action plan as a way to terminate the grievor's employment, which she did in April 2016.

327 The grievor was very surprised to hear that Ms. Lusk did not think that she was collaborating with her colleagues. She always made every effort to assist anyone. This was just an example of how bad things had become and why she was trying to get to Ottawa; she wanted to be out from underneath Ms. Lusk. The reason she started looking to transfer in 2009 was that Mr. Boudreault had threatened her.

328 The grievor disagreed that Ms. Lusk tried to coach her. She did not tell the grievor what she was not doing. All Ms. Lusk had to do was tell the grievor what she needed to do, and the grievor would have done it. There was no need for an action plan. Ms. Lusk regularly advised the grievor verbally and in writing that she would be terminated if she did not meet Ms. Lusk's performance expectations.

329 The real reasons that the grievor was terminated were that she filed a human rights complaint against Mr. Boudreault in 2011, that she tried to save the RPS, that she filed harassment complaints against Ms. Lusk and Ms. Titus, that she grieved suspensions imposed against her by the employer (which were overturned), that she

repeatedly asked for her jobs to be reclassified, that she insisted on teleworking, and that she made repeated requests to transfer to the National Capital Region, for compassionate reasons.

330 The grievor did not call any of her co-workers as witnesses because she feared that they would become retaliation targets. During the time leading to the termination, most of them reported to Ms. Lusk. Most of her clients, including managers, employees, and union representatives, did not believe that Ms. Lusk would terminate the grievor in such a way as to make her unemployable. When the grievor attempted to keep the employer transparent and accountable, she received pushback from Ms. Lusk.

331 There was no way that Mr. Lorenz could not have known that the grievor was teleworking due to her medical condition unless this was an example of Ms. Lusk's manipulation and inaccurate information. This amounts to the intentional infliction of mental suffering at the hands of Ms. Lusk, for which the employer is liable (see the Lancaster House "eAlert No. 374").

IV. Reasons

332 The law is well-settled in terms of the Board's role when an employee brings an individual grievance relating to a termination for unsatisfactory performance. Section 230 of the *Act* reads in part as follows:

230 In the case of an employee in the core public administration..., in making a decision in respect of an employee's individual grievance relating to a termination of employment...for unsatisfactory performance,...the Board...must determine the termination...to have been for cause if in the opinion of the deputy head that the employee's performance was unsatisfactory is determined by...the Board to have been reasonable.

333 The scope of the Board's role under s. 230 of the *Act* has been consistently applied in numerous cases (see, for example, *Raymond, Plamandon, Mazerolle*).

In *Reddy*, for instance, while it involved a termination for unsatisfactory performance by an employee of a separate agency, the Board's reasoning as to the scope of intervention under s. 230 of the *Act* is well-articulated at paras. 87 and 88:

87... *The adjudicator's role is to determine whether it was reasonable for the employer to deem the employee's performance unsatisfactory and not whether the decision to terminate was reasonable. If the employer's assessment that the employee's performance was unsatisfactory was reasonable, I must find that the termination that ensued was for cause, and I cannot interfere with that decision ...*

88 *Therefore, the scope of my intervention is limited to answering this single question: Was it reasonable, based on the evidence adduced by the parties, for the employer to deem the performance of the employee in question unsatisfactory?*

334 More recently, the Federal Court of Appeal confirmed the proper scope of the Board's intervention under s. 230 of the Act in *Forner*. The unanimous Court found that the adjudicator should not have made an independent analysis of the employee's performance.

335 Rather, as the Court explained at para. 17 of its decision:

"Since the Deputy Head had determined that the applicant's performance was unsatisfactory, the Adjudicator should have restricted his discussion to the issue of whether the Deputy Head's decision was reasonable instead of proceeding to a two-step analysis as he did."

Thus, according to the Federal Court of Appeal in *Forner*, I am to restrict my discussion to the issue of whether the deputy head's decision was reasonable.

336 As pointed out in *Raymond* (at para. 131), if the evidence showed that the deputy head or the supervisors, acting on the deputy head's behalf in assessing the employee's performance, were involved in a bad faith exercise, then I could not see how it would be possible for me to find that it was reasonable for the deputy head to consider the grievor's performance unsatisfactory. In both the reference to adjudication, and the submissions before me, the grievor alleged that her termination was "reprisal" for the following actions on her part: filing a human rights complaint against Mr. Boudreault in 2011, harassment complaints, and grievances; repeatedly asking for her position to be reclassified and to be transferred to Ottawa; her insistence on teleworking; and, her attempts to save the RPS. In addition, she alleged that her termination constituted discrimination on the basis of disability.

337 The question then is does the evidence presented at the hearing lead me to find that the grievor's termination was that result of reprisal on the part of the employer? The short answer is no.

338 Other than the bare assertion that she filed a human rights complaint against Mr. Boudreault in 2011, the grievor presented neither testimony nor documentary evidence on this. She did not raise the matter with Mr. Boudreault on cross-examination. There is nothing in the evidence on this matter. The only reference in her testimony to alleged discrimination around this time was her testimony that Mr. Loyer had allegedly asked her how old she was because he was under the assumption that he was to have a young team. (According to the evidence, Ms. Titus was also subject to an age discrimination complaint in 2015.) In any event, the grievor has failed to show how this alleged 2011 complaint is tied to her termination in 2016.

339 Similarly, the grievor claims that a further aspect of the employer's reprisal arises from her harassment complaints against Ms. Lusk and Ms. Titus both of which were dismissed. The evidence is replete with years of harassment allegations and complaints from the grievor. In addition to her harassment complaints against Ms. Lusk and Ms. Titus, the grievor filed harassment complaints against Mr. Boudreault and Mr. Loyer.

340 The formal harassment complaints against Ms. Lusk and Ms. Titus were closed by Mr. Christiansen on June 17, 2015 (Exhibit 30), for failing to meet the definition of harassment under the Treasury Board's harassment policy. The number of harassment and other complaints the grievor filed against any manager who made a serious or any effort to manage her work and performance is extremely telling. In other words, it would certainly appear from the evidence before me that anyone who tried to manage the grievor was a target of harassment allegations, at the very least, and, often, formal harassment or human rights complaints.

341 What all of this leads me to conclude is that the actions of the employer in terminating the grievor were not tied to the grievor's harassment complaints against Ms. Titus and Ms. Lusk. If the real reason for termination related to the bringing of grievances, human rights complaints, harassment allegations or formal harassment

complaints by the grievor, it would seem unlikely that the grievor would have remained employed with the CBSA from 2008 to 2016.

342 In terms of both the telework and attempts to relocate to Ottawa, again, the evidence does not support the grievor's claim that the employer engaged in reprisal. At the time of her termination, the grievor had been teleworking since 2013. While the evidence does show that the employer sought clarifications concerning the telework arrangement during this period, the fact is that the grievor was permitted to work outside the office. There is no evidence that the employer's action plan was retaliation for the grievor teleworking. To succeed with this allegation, the grievor had to show that the action plan was a sham or a camouflage or that it was made up. It is clear that it was based on her poor performance and not on the telework. If the employer wanted to end the telework arrangement, then why did it go through the lengthy action plan process?

343 As well, the evidence establishes that the employer had tried to assist the grievor in her desire to relocate to the NCR. For instance, both Mr. Loyer and Ms. Leonard made efforts on behalf of the grievor in 2010-2011. As the grievor's relocation efforts had been ongoing for a number of years, and the evidence is that management was attempting to assist her in this regard, I cannot possibly see how her repeated requests for relocation led to the employer taking reprisal action against her. The irony is that the grievor's behaviour did more to tarnish her reputation and prevent her relocation than anything else that happened during her employment, despite the counselling she received from Ms. Leonard that if she persisted, her reputation might suffer.

344 There are two other elements that form the basis of the grievor's claim of reprisal: her repeated requests to have her position reclassified and her attempt to save the RPS.

345 Dealing with the reclassification matter, while the grievor asserts that she repeatedly asked that her position be reclassified, this is not what is in the evidence. The evidence before me is that the grievor raised the matter of reclassification during a mid-year review with Ms. Titus. I do not have evidence that she repeatedly asked for her

position to be reclassified. Even if I had this evidence before me, employees can request a desk audit of their position when they feel their position is under classified. There is nothing in the evidence that suggests that the employer took any steps to dissuade the grievor from pursuing reclassification of her position through a formal process.

346 Finally, the grievor's claim that her efforts to save the RPS in some way led the employer to take reprisal is similarly not supported by the evidence. The comments Ms. Lusk made on the grievor's action plan related to the RPS, in my view, do not assist the grievor in her claim of reprisal (Exhibit 32, tab 45, pages 2 and 3 of the action plan). Therefore, taken individually or collectively, I cannot accept the grievor's claim that she was terminated as a result of reprisal by the employer for her actions discussed above.

347 The grievor also alleged that the employer discriminated against her by terminating her contrary to the *CHRA*. Although it is unclear from her testimony upon which prohibited ground she relied, the Form 24 Notice to the Canadian Human Rights Commission that she filed in conjunction with her reference to adjudication states that the prohibited ground of discrimination is disability.

348 According to s. 226(2)(a) of the Act, the Board may, in relation to any matter referred to adjudication, interpret and apply the *CHRA* (other than its provisions relating to equal pay for work of equal value), whether or not there is a conflict between the *CHRA* and the collective agreement, if any. Section 7 of the *CHRA* provides that it is a discriminatory practice to refuse to continue to employ any individual on a prohibited ground of discrimination.

349 One of the prohibited grounds listed in s. 3 of the *CHRA* is disability. Under s. 25, disability is defined as meaning "... any previous or existing mental or physical disability ...". If I were to find that the employer had refused to continue to employ the grievor on the prohibited ground of disability, I would conclude that the deputy head's decision to terminate the grievor was discriminatory and, thus, unreasonable.

350 To establish that an employer engaged in a discriminatory practice, a

grievor must first establish a *prima facie* case of discrimination, which covers the allegations made, and that if the allegations are believed, would be complete and sufficient to justify a finding in the grievor's favour in the absence of an answer from the employer (see *Ontario Human Rights Commission v. Simpsons-Sears*, [1985] 2 S.C.R. 536 at para. 28 (*O'Malley*)). The Board cannot consider the employer's answer before determining whether a *prima facie* case of discrimination has been established (see *Lincoln v. Bay Ferries Ltd.*, 2004 FCA 204 at para. 22).

351 It is not necessary that discriminatory considerations be the sole reason for the actions at issue for the discrimination claim to be substantiated. The grievor need only show that discrimination was one of the factors in the employer's decision (see *Holden v. Canadian National Railway Company* (1990), 14 C.H.R.R. D/12 (F.C.A.) at para. 7). The standard of proof in discrimination cases is the civil standard of the balance of probabilities (see *Public Service Alliance of Canada v. Canada (Department of National Defence)*, [1996] 3 FC 789).

352 To demonstrate *prima facie* discrimination, the grievor has to show that she had a characteristic protected from discrimination under the *CHRA*, that she experienced an adverse impact with respect to her employment, and that the protected characteristic was a factor in that adverse impact (see *Moore v. British Columbia (Education)*, 2012 SCC 61 at para. 33).

353 I am not satisfied that the grievor has established that she suffered from a characteristic protected from discrimination under the *CHRA*, namely, disability. The grievor failed to present sufficient evidence before me either in her testimony or through medical documentation to establish that she had a disability. In fact, the grievor insists that she never asked for accommodation other than telework, which she received. Even if a disability precluded her from meeting the performance standards set out for her, it was never disclosed to the employer, and there is no nexus between the disability and the assessment of her performance.

354 In other words, she has not presented sufficient evidence to establish that, even if she had satisfied me that she had a disability protected under the *CHRA*, her

disability was a factor in the adverse impact, namely, her termination. Since the grievor has failed to establish a *prima facie* case of discrimination, I conclude that the employer did not discriminate against her when it terminated her employment.

355 I now turn to the key issue that I must determine in this case, namely: Was it reasonable, based on the evidence adduced by the parties, for the employer to deem the grievor's performance unsatisfactory?

The exhibits are replete with what the employer considered inappropriate communications that did not meet the communication level required by the DACC job description or the Human Resources Communication Covenant. Most were entered through the grievor's exhibits. Through the course of her testimony, the Board repeatedly asked her whether she now found any of these emails problematic or inappropriate. She repeatedly responded that all were perfectly fine and that she could not help how others interpreted her comments. The employer provided me with selections of three communications, which I consider noteworthy. All come from emails that the grievor wrote to clients or colleagues:

...The employee fights me on everything. The employee thinks I don't know what I'm talking about ... I wish they would shut up and listen to me and such situations would not occur... [Exhibit 5, tab 10].

...

... Don't waste my time with unsound verbiage... [Exhibit 5, tab 12].

...

... Sounds like you forgot to bring your sense of humour to work with you today!!! ... [Exhibit 5, tab 15].

356 What strikes me most is the astoundingly different interpretation she put on her exhibits and the evidence. Nowhere can I find anything to support her repeated assertions that she exceeded expectations.

357 To the contrary, it was clear to me that she did not want to be managed. She wanted to perform her job functions alone and in her own way, whether or not doing so complied with the employer's expectations or the clients' needs. Also clear is

that the employer identified serious performance concerns, raised them with her, and gave her the chance to ameliorate the situation, which she refused to do. She refused to accept any responsibility for her situation or to address any of the performance deficiencies, which ultimately resulted in her termination.

358 The employer satisfied me that it had a legitimate concern with how the grievor communicated in the workplace and that despite her often belligerent behaviour, the termination was not for any reason other than unsatisfactory performance. In fact, that behaviour was on display during the hearing in the form of her communication style and in how she interacted with the employer's representatives and agents at the hearing.

359 I am also satisfied that the employer had a legitimate apprehension that the behaviour she demonstrated negatively impacted delivering the occupational health and safety and DACC services because of how she interacted with clients, managers, her co-workers, and CBSA management.

360 The grievor did not convince me that the employer used the performance management process for anything other than a legitimate purpose. In fact, given her reluctance to cooperate with the action plan and with anyone in management in the Atlantic Region who tried to work with her to improve her communication style, the employer demonstrated a high level of tolerance in its ongoing efforts to see that the grievor improved her communication style. The belligerent approach she took to her dealings with her managers set her up for failure, and rather than adjust her attitude towards them for success, she escalated her belligerence, ensuring her failure.

361 Performance management meetings, particularly those involving action plans, may not be pleasant for either party involved and are often stressful, particularly for the employee who hears that his or her continued employment is at risk. Regardless, these meetings and performance action plans are legitimate tools for the employer to use to manage an employee's performance and did not constitute harassment on the evidence before me, contrary to the grievor's assertions.

362 To protect its program and the grievor's continued employment, the employer undertook performance management steps that were neither arbitrary nor

egregious. From the very outset of her employment, the grievor was made aware that her communication style required changing. She was not held to some impossible or extraordinary standard; she was expected to comply with the requirements of her job description and the Human Resources Communications Covenant, as were all Human Resources employees with whom she worked.

363 The employer took great pains to help the grievor achieve her goal of continuing her CBSA employment by successfully completing her action plan. She was provided training, which she fought against rather than embracing and taking full advantage of it. She battled constantly against Ms. Lusk's attempts to mentor her. It is clear that she had no intention of making any of the changes required to successfully complete the action plan, which left the employer with no alternative other than terminating her employment.

364 Faced with the expenditure of time, effort, and resources on an employee who was adamant that she would not change, and faced with the negative impact that her communication style had on service delivery, as was evident from the complaints from the people she encountered, the deputy head's decision was in my opinion eminently reasonable. It was not a bad-faith exercise; the performance standards were appropriate and were repeatedly communicated to the grievor, and she was given the tools, training, and mentoring required to meet them in a more than reasonable period. The standards she was assessed against were not created specifically for her. She was expected to meet the same standards as everyone else in the same classification.

365 The expectations in the action plan were those of the employer, not Ms. Lusk.

It is noteworthy that Ms. Lusk did not create the action plan. The action plan was linked to the job description and the performance agreement. There is absolutely no evidence that the grievor was dismissed for any reason other than her performance.

366 Accordingly, I find that the termination was not a bad faith exercise, nor was it reprisal by the employer. I also find that the grievor was subject to appropriate standards of performance, which were clearly communicated to her, and she was

provided with the tools, training, and mentoring required to meet the performance standards in a reasonable period.

367 Since I have determined that the deputy head's opinion that the grievor's performance was unsatisfactory was reasonable, I conclude that the termination of employment to have been for cause.

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

V. Order

369 The grievance is dismissed.

January 30, 2019.

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