Date: 20200210

File: 566-02-12248

Citation: 2020 FPSLREB 9

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

VICTORIA ALEXIS

Grievor

and

DEPUTY HEAD
(Royal Canadian Mounted Police)

Respondent

Indexed as
Alexis v. Deputy Head (Royal Canadian Mounted Police)

In the matter of an individual grievance referred to adjudication

Before: John G. Jaworski, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Grievor: Raphaëlle Laframboise-Carignan, counsel

For the Respondent: John Craig, counsel

Heard at Edmonton, Alberta, and Ottawa, Ontario,
August 13 to 16 and September 6, 2019.

REASONS FOR DECISION

I. Individual grievance referred to adjudication

[1] Victoria Alexis ("the grievor") was employed by the Treasury Board (TB or "the employer") with the Royal Canadian Mounted Police (RCMP) as a detachment services assistant ("DSA"), classified in the Program and Administrative Services group at the CR-04 level, in the RCMP's Western Alberta District at its detachment in Mayerthorpe, Alberta. By letter dated June 5, 2015 ("the June 5 letter"), she was terminated from her position, effective that day.

[2] The relevant portions of the June 5 letter state as follows:

> …
>
> *As indicated in your letter of offer, your initial appointment to the Public Service on December 29, 2014 was subject to a 12-month probationary period in accordance with the governing Treasury Board Regulations. I have concluded that despite efforts to bring your performance up to an acceptable level, you have not demonstrated that you can satisfactorily perform the duties of a Detachment Services Assistant.*
>
> *Therefore, in accordance with the authority delegated to me by the Commissioner, and pursuant to section 62 of the* Public Service Employment Act, *you are hereby terminated during the probationary period from your position of Detachment Services Assistant due to your not demonstrating the required skills. More specifically, you are not demonstrating an ability to follow directions/instructions, ability to prioritize, ability to respond effectively to policing matters, ability to input data with minimal errors, and ability to work cooperatively with others.*
>
> *Feedback on your performance has been provided on a routine basis, and training, coaching and mentoring have also been undertaken in order for you to obtain the required skills to carry out your duties. You were advised verbally by your Detachment Commander that a failure to comply with expectations may result in your rejection on probation and also in writing via a letter dated 2015-05-08. To date, no improvement has been observed to indicate that you will be able to demonstrate the required skills for successful job performance.*
>
> …

[3] On June 23, 2015, the grievor filed a grievance against the termination of her employment. It was denied at all levels of the grievance procedure. On March 9, 2016, it was referred to the Public Service Labour Relations and Employment Board (PSLREB)

for adjudication under ss. 209(1)(b) and (c)(i) of the *Public Service Labour Relations Act* (S.C. 2003, c. 22, s. 2; *PSLRA*).

[4] On April 1, 2016, the employer objected to the jurisdiction of a panel of the PSLREB to hear the grievance on the ground that s. 211 of the *PSLRA* did not allow referring a grievance to adjudication about any termination made under the *Public Service Employment Act* (S.C. 2003, c. 22, ss. 12, 13; "the *PSEA*").

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

[6] On Wednesday August 7, 2019, the grievor delivered to the Board an amended referral to adjudication.

[7] The employer called three witnesses, Patricia Lakeman, Sergeant (Sgt.) Scott McAuley, and Marianne Ryan. The grievor testified and called one witness, Constable (Cst.) Lindsay Paddick.

A. Summary of the evidence

[8] The grievor is a member of the Alexis Nakota Sioux Nation. As of the hearing and the matters involved in this grievance, she resided on the Alexis Nakota Sioux Nation Reserve ("Alexis"). Alexis is located about 50 km from the town of Mayerthorpe, Alberta, both of which are northwest of Edmonton. She testified that she speaks Stoney (the language of the Alexis Nakota Sioux Nation). In addition to her high-school education, she holds the following diplomas and certificates:

- Legal Secretary and Clerk Typist Diploma from Grant McEwan College in Edmonton (1991);

- Aboriginal Addictions Diploma Program from Keyano College in Edmonton (2010); and
- Aboriginal Child and Family Services Certificate from Keyano College (2009).

[9] All in Edmonton, she also completed two years of the Native Studies Program at the University of Alberta (2003 to 2005), one year of business administration at the Academy of Learning (2007), and one year in the University Transfer Program at Yellowhead Tribal College (1992).

[10] Immediately before May of 2013, the grievor was employed full-time at the Alexis Health Centre.

[11] Sometime before May 3, 2013, the Alexis Nakota Sioux Nation posted an advertisement for a DSA position working out of the RCMP's detachment office in Alexis, which was a satellite office of the Mayerthorpe detachment. The position advertised was not a public service position; the employer was not the TB but the Alexis Nakota Sioux Nation. On May 3, 2013, the grievor applied. One of the conditions of being hired was that the successful applicant would be subject to an RCMP security clearance process.

[12] By email dated October 21, 2013, Sgt. Ryan Comaniuk, the RCMP's Mayerthorpe detachment commander at that time, informed the grievor that she met the requirements for the position and that it was his intention that she be hired. He advised her that he would make this recommendation to the Alexis Nakota Sioux Nation Chief and Council.

[13] The grievor testified that in the spring of 2014 (the specific date, she could not recall), she met with Sgt. Comaniuk. They discussed her start date. She told him that she needed to give two weeks' notice at her current job. She then testified that it was agreed that she would start in the position on May 2, 2014. So, on April 17, 2014, she gave the Alexis Health Centre her two weeks' notice, resigning effective May 2, 2014.

[14] For reasons that were not made clear at the hearing, at some point after the grievor received Sgt. Comaniuk's October 21, 2013, email, and after April 24, 2014, an agreement was entered into between the Government of Canada, the Province of Alberta, and the Alexis Nakota Sioux Nation under which certain terms and conditions

were agreed to with respect to policing in Alexis by the RCMP. A copy of the agreement was not provided to the hearing.

[15] The DSA position that the grievor was to be hired into disappeared. In its stead was a new DSA position, which was a public service position with the TB as the employer. It was located with the RCMP. Unfortunately for the grievor, it appeared that no one at the Alexis Nakota Sioux Nation or the RCMP advised her of this before she tendered her resignation from the Alexis Health Centre and, as of May 2, 2014, became unemployed.

[16] The grievor was required to apply for the new TB DSA position, and on October 10, 2014, she did so. By letter dated December 16, 2014, she was advised that she was the successful candidate and was offered the position. Attached to that letter were terms and conditions of employment that among other things, advised as follows:

…

> ***Salary:***
>
> *The salary range for the CR-04 group and level is $45,189.00 to $48,777.00 per annum and your salary upon appointment will be $45,189.00 per annum.*
>
> ***Performance Agreement:***
>
> *Please be advised that a performance agreement between you and your supervisor will be prepared outlining your on-going [sic] and key commitments and performance measures.*
>
> …
>
> ***Probationary Period:***
>
> *In accordance with section 61 of the* Public Service Employment Act*, employees appointed from outside the public service are subject to a 12 month probationary period, excluding any periods of leave without pay, full-time language training, or leave with pay in excess of thirty consecutive days, and any off-duty periods in the case of seasonal employees.*

…

[17] The grievor accepted the offer on December 18, 2014. Her first day of work was December 29, 2014.

[18] As of the hearing, Ms. Lakeman was still employed as a DSA, classified at the CR-05 group and level, at the Mayerthorpe detachment, and she had 34 years of service, 22 of them at Mayerthorpe.

[19] As of the hearing, Sgt. McAuley was the outgoing detachment commander at Mayerthorpe. He began in that position in 2013. He joined the RCMP in 2004. Before his posting at Mayerthorpe, he had been posted in Rossburn, Manitoba, as a unit commander, and as a constable in Langenburg, Saskatchewan, and Okotoks and Lac la Biche, Alberta. Before joining the RCMP, he was with the Calgary Police Service.

[20] As of the hearing, since July of 2017, Ms. Ryan was Alberta's ombudsman and public interest commissioner. She was appointed to that position once she retired from the RCMP in March of 2017 after 35 years of service. Her last position was as the RCMP's commanding officer in Alberta, which she held from February of 2014 until her retirement. Between January of 2011 and February of 2014, she was the RCMP's criminal operations officer in Alberta (the de facto No. 2 position in the RCMP there), and between September of 2009 and January of 2011, she held a human resources officer position with the RCMP for British Columbia and the Yukon.

[21] As of the hearing, Cst. Paddick was a member (police officer) of the RCMP, albeit on leave. She testified that she started working at Mayerthorpe in June of 2014 and that sometime in either May or June of 2015, she carried out administrative duties until she went on leave in early November of 2015.

[22] The Mayerthorpe detachment was responsible for policing the town of Mayerthorpe, the Lac St. Ann region, and Alexis. The population of the area was roughly 11 000 to 12 000, of which between 50 and 60% were in Alexis. The detachment maintained a satellite office in Alexis, which Sgt. McAuley described as a storefront location. The evidence disclosed that it was not always open.

[23] Sgt. McAuley stated that according to the organizational chart, the detachment was to have 10 RCMP members and 3 public service ("civilian") employees, and it could hire casuals. All persons at Mayerthorpe (and by extension Alexis), both members and civilian staff, reported either directly or indirectly to Sgt. McAuley.

[24] The evidence disclosed that when the grievor began in the position on December 29, 2014, Sgt. McAuley was on leave. He returned sometime in January of 2015 (the exact date was not clear). It was also not clear when he first met her and discussed her employment.

[25] The grievor testified that when she arrived for work on that first day, her oath was administered by a Corporal (Cpl.) Poetrabenko, and that she was given a thick policy manual that she was instructed to review, which she said she did over her first week. She also said the following:

- Cpl. Poetrabenko showed her around the office;
- most of the staff appeared to be away for the Christmas holidays;
- she was not told who her supervisor was or who would train her;
- she was not provided with any orientation; and
- no one explained her duties to her.

[26] While Sgt. McAuley was the grievor's direct supervisor, both his evidence and that of Ms. Lakeman was that Ms. Lakeman was to be her mentor. Ms. Lakeman confirmed that Sgt. McAuley asked her to be the grievor's mentor. The grievor stated that when she started working, Sgt. McAuley did not direct her because he was not there. She also stated that she was not told that Ms. Lakeman would be her mentor until sometime in March of 2015. She said that she was taught or trained by whomever was available at the detachment. According to Sgt. McAuley, he assigned Ms. Lakeman to train the grievor upon the grievor's arrival at the detachment. However, later in his evidence, he stated that when the grievor started, he was on leave until mid-January of 2015.

[27] Entered into evidence was a copy of the generic work description for a CR-04 DSA. Both Ms. Lakeman and Sgt. McAuley identified it as the job description for the grievor's position. The grievor testified that she was never given a copy of it. While in cross-examination, Ms. Lakeman identified the job description and was brought through the key activities, she did not state that she gave it to the grievor. Sgt. McAuley stated that it was given to the grievor when she was hired. However, no copy was attached to the letter of offer, and there was no evidence that he or anyone else gave her one.

[28] The relevant portions of the work description are as follows:

…

Key Activities

1. Receive, assess and respond to front counter and telephone enquiries, complaints, and requests for information (e.g. joint police/community initiatives, criminal records checks, legislation, etc.) and services (e.g. motor vehicle collision reporting, receipt and cataloguing of firearms, fingerprinting services, etc.) from the general public.

2. Provide information, advice and options to internal clients to assist in their understanding of and compliance with administrative and operational policies, guidelines, processes and procedures.

3. Receive and handle emergency and OCC/911calls, record information on the details of the complaint (location, circumstances, number of individuals, witnesses, weapons involved, and notify/dispatch appropriate responder(s).

4. Research, input, modify, manipulate, track, analyse, extract and delete data and information in a variety of automated Operational Records Management Systems (ORMS) and other automated systems, for example: CPIC, CKIT, PIRS, ENR III, SCIS, PROS, PRIME, TSMIT, DIBS, CIIDS, NCDB, JUSTIN and TEAM[1] and manual filing systems, and extract statistical data.

5. Maintain radio contact with regular members to provide pertinent information from data banks, relevant background material, such as potential for violence, suicidal tendencies, call back-up [sic] and other assistance for member, and to support well-being and safety of members and involved general public/victims.

6. Receive and record monies (e.g. fines, fingerprints, copies of accident reports), prepare invoices and handle petty cash.

7. Purchase and maintain office supplies and equipment, arrange for repairs and maintenance of equipment and facilities, and maintain inventory of supplies and equipment.

8. Provide a broad array of administrative support and services, such as: receive, sort, file and distribute mail; arrange courier services; assist in the storage and safekeeping of exhibits/evidence, when assigned; transcribe internal and external correspondence, and action ATIP requests under guidance of supervisor.

…

[1] Canadian Police Information Centre (CPIC); CKIT Clothing and Kit; Police Information Retrieval System (PIRS); ENR III (Major Case Mgn't Tool); Secure Criminal Information System (SCIS); Police Reporting and Occurrence System (PROS); Police Records Information Management Environment (PRIME); Traffic Services Management Information Tool (TSMIT); Division Information Band System (DIBS); Computerized Integrated Information Dispatch System (CIDS); National Crime Data Base [sic] (NCDB); external Integrated Justice Systems (JUSTIN); and (TEAM) which refers to the RCMP corporate and asset management system.

…

[29] The grievor was taken through those key activities. She stated that she did not carry out the activities identified as numbers 2, 3, 5, 6, and 7. She said that she saw the work description for the first time as part of the package of material that a bargaining agent representative provided to her in preparation for the hearing.

[30] From the evidence of the grievor and Ms. Lakeman, it appears that the grievor's duties and responsibilities were largely as follows:

- answering and taking information over the detachment telephone;
- attending the detachment's front counter and taking information from members of the public;
- creating files in a computer data system called the "Police Reporting and Occurrence System" (PROS) and inputting information into it;
- carrying out criminal records checks;
- transcribing recorded audio statements or interviews taken or conducted by police officers;
- creating paper files and filing documents into them;
- contacting police officers via a two-way radio; and
- processing mail.

[31] The evidence disclosed that information brought to the RCMP was varied and that it involved motor vehicle accidents, criminal activity, domestic issues, and missing persons.

[32] PROS is a filing system used by the RCMP Canada-wide except in B.C. Ms. Lakeman described it as critical to the RCMP's work and to a detachment office as all information collected is inputted into it. She stated that if something happens or if someone comes in or calls in, a file is created, and the information provided is placed in the file. Given the RCMP's work, it is important that the data be correct and accurate as errors could result in serious consequences. The RCMP has a PROS training course, which the grievor took over four days between February 3 and 6, 2015, in Edmonton and successfully completed.

[33] "CPIC" stands for "Canadian Police Information Centre". It is a Canada-wide computer information system used by law-enforcement agencies, including the RCMP. The evidence disclosed that the training on it was divided into two parts, comprising an online portion, which was to be carried out first, and then an in-person classroom session. Sgt. McAuley testified that the grievor completed the online portion but that she did not get to do the in-person session. When he was asked why she did not do it, he answered as follows: "Many variables. Availability. And she never took [it]. Without going to calendar, I can't tell you when the training sessions were scheduled."

[34] In her evidence, the grievor stated that she had to complete the online CPIC training before she could attend the in-person classroom training, which she said was to take place in September of 2015.

[35] Entered into evidence was a copy of the grievor's training record, which disclosed that she took what appeared to be the online CPIC training between March 6 and 30, 2015. I was provided with no other details of that training.

[36] Listed in the work description under "Key Activities" at the fourth point were several other data, information, and automated systems that the job description stated that the grievor would be required to use to research, input, modify, track, analyze, extract, and delete data and information from. They were identified as ORMS, CKIT, PIRS, ENR III, SCIS, PRIME, TSMIT, DIBS, CIIDS, NCDB, JUSTIN, and TEAM. There is no evidence that she received or was offered any formal or informal training on any of them. Her training record discloses no training on them.

[37] Entered into evidence was a copy of a computer-printed document created by Ms. Lakeman ("the Lakeman notes"), which she identified that she used to chronicle issues or events involving the grievor. The Lakeman notes had entries for the following dates, all in 2015:

- February 9, 12, 16, 23, 24, and 25;
- March 2 and 20;
- April 1, 2, 3, 8, and "End of April 2015";
- May 1 and 29; and
- June 1, 2, and 3.

[38] She said that she shared the Lakeman notes only with Sgt. McAuley and that she provided them at two separate times, the first sometime after the first six pages were completed (of which the last entry on the sixth page was for May 1, 2015), and the second when the last six pages were completed (of which the last entry was June 3, 2015). Sgt. McAuley confirmed receiving them. However, there was no evidence as to when exactly they were provided to him. When he was asked if he shared them with the grievor, he stated, "No."

[39] Entered into evidence was a copy of handwritten notes created by Sgt. McAuley ("the McAuley notes"), which he identified as a continuous set of notes chronicling issues with the grievor. Counsel provided a typewritten copy of them, for ease of reference. In his evidence, Sgt. McAuley confirmed that he did not share them with anyone. They have entries for the following dates:

- September 25, 2014;
- January 30, 2015;
- February 9,10, 19, and 26, 2015;
- March 4, 2015;
- April 30, 2015; and
- May 4 and 8, 2015 (identified as "1633").

[40] Other than the grievor, Ms. Lakeman was the only other full-time civilian employee in Mayerthorpe. Three other civilian employees were either casual or part-time: Sherry Jackson, Julie Rah, and Margaret Thibault.

[41] Sgt. McAuley's evidence was that Mses. Jackson or Rah provided him with input about the grievor's performance in writing; however, none of it was produced in evidence.

[42] None of Mses. Jackson, Rah, or Thibault testified.

[43] Other than the Lakeman notes, there are no other written records whatsoever (notes, emails, memos, or letters) indicating what, if anything, Ms. Lakeman said to Sgt. McAuley about the grievor's performance or when those discussions took place.

[44] The total of the evidence on the discussions of Ms. Lakeman and Sgt. McAuley came in cross-examination, when the grievor's counsel asked him how often he discussed her performance with Ms. Lakeman, to which he stated, "Fairly regularly. Not formal, but we are not a large detachment. Likely discussed weekly."

[45] In her examination-in-chief, Ms. Lakeman testified that she met with the grievor as soon as the grievor started and that she trained the grievor. However, later, she said that she oversaw the grievor's training. The first two entries in the Lakeman notes were dated February 9 and 12, 2015, and neither was about work performance but instead about work hours and leave. The first entry about the grievor's work performance is dated February 16, 2015.

[46] She also said that she interacted with the grievor daily; however, the evidence disclosed that one of her major responsibilities was being the court liaison, which she said took her out of the detachment one day a week, typically on Monday. She also disclosed that she was out of the office every second Friday, as she worked a compressed schedule.

[47] Ms. Lakeman stated that in the past, she had trained other employees. When she was asked what she did to train the grievor, she said that she went to the counter with the grievor and told her the steps to take.

[48] In cross-examination, Ms. Lakeman said that she was not the only person who trained the grievor; so did Mses. Rah and Jackson. The grievor testified that when she started, she received instructions from whomever was present. She said that Ms. Lakeman did not become involved until about February. She said that she received most of her initial training from Ms. Rah and Ms. Jackson; however, at times, she was the only civilian employee in the detachment. She said that she recalled Ms. Rah being there on Mondays, Tuesdays, and Wednesdays. She said when there were no civilian employees in the detachment, if she had questions, she asked the members.

[49] The grievor and Ms. Lakeman confirmed that no document, agenda, or training manual explained or detailed what to do and how to do it. The grievor said that she just followed the others around and watched how they did things. The grievor said that the first thing she was taught was filing, by Mses. Rah and Jackson. She said that she had to deal with front-counter matters on her own when no other staff members were present. She said that for phone calls, she was told to answer them and record

the name and particulars of the person calling, along with the reason for the call. Again, she said that Mses. Rah and Jackson told her how to do it.

[50] Sometime in January of 2015, another civilian employee (anonymized in this decision as "Ms. A") was brought on at the detachment through a priority process. This information came out during the cross-examination of Ms. Lakeman. Ms. A had prior experience working for the RCMP. Ms. Lakeman confirmed that while Ms. A was at Mayerthorpe, she trained her, because Ms. A was learning court-liaison duties. Neither Mses. Rah nor Jackson provided Ms. A with any training. Ms. Lakeman confirmed that her training of Ms. A took her away from any training she was providing to the grievor. In cross-examination, Ms. Lakeman said, "Victoria [the grievor] was mostly with Julie and Sherry [Mses. Rah and Jackson]."

[51] More than once in her cross-examination, the grievor said that Ms. Lakeman had not been around much.

[52] Every employee is supposed to have a performance agreement that sets out parameters against which the employee's work is to be assessed. An assessment should have been done for the period of the grievor's employment from her start date through to March 31, 2015. The evidence disclosed that Sgt. McAuley emailed her on February 11, 2015, about accessing a TB computer program in which she was to create a portal and add him as her supervisor, which was required so that a performance appraisal profile could be created and the assessment process carried out. The email stated as follows:

> …
>
> *Please go in and create your profile and add me as your supervisor. This is required as I need to have this done to complete your assessment.*
>
> *The link to the Application is here: https://portal-portail.tbs-sct.gc.ca/home-eng.aspx*
>
> …

[53] Sgt. McAuley stated that the grievor did not create her profile. Therefore, he was unable to provide her with a performance appraisal. Her evidence was that she did create one.

[54] Entered into evidence was the following email exchange between Sgt. McAuley and the grievor on February 24 and 25, 2015:

> [The grievor to Sgt. McAuley, February 24 at 3:59 p.m.:]
>
> *You asked me if I needed any more training in PROS, where do I do that? Also, am I able to take a [sic] training in IM?*
>
> [Sgt. McAuley to the grievor, February 24 at 4:05 p.m.:]
>
> …
>
> *Do you feel that you require additional training on PROS? I can follow up with the PROS Unit to see what we can arrange. You will not get the IM training until you are proficient on the basic PROS.*
>
> [The grievor to Sgt. McAuley, February 25 at 11:23 a.m.:]
>
> *If you can arrange for more PROS training for me, it would be greatly appreciated.*
>
> *Also, I wanted to know if it would be possible for you to arrange for me to visit another RCMP Detachment on Reserve, possibly Hobbema or Enoch? I would just like to see if there are any special circumstances I should be aware of working out of a reserve detachment.*
>
> …
>
> [Sgt. McAuley to the grievor, February 25 at 11:27 a.m.:]
>
> …
>
> *I can call the Pros [sic] Unit to see if they can assist. The day to day operations at the satellite office will be the same as in Mayerthorpe so I won't be supporting your second request.*
>
> …

[55] The evidence disclosed that there was more than one level of PROS training and that the grievor received only the initial part. According to Sgt. McAuley, before she could receive the next level, she had to reach a certain level of proficiency.

[56] Entered into evidence was an email from Desaree Crowe (the PROS trainer in Edmonton) to Sgt. McAuley and one from February 25, 2015, in which it appears that he forwarded Ms. Crowe's email to the grievor. Ms. Crowe's email was timestamped 12:35 p.m. on February 25, while Sgt. McAuley's forwarding email appears timestamped 11:29 a.m. on that same day. No one explained the discrepancy. The emails read as follows:

> [Ms. Crowe to Sgt. McAuley, at 12:35 p.m.:]
>
> …
>
> *For additional PROS instruction, a user can go into the instructional data base rather than the operational in order to have an opportunity to bring up their PROS skills.*

> *The attached screen shot shows how to sign in to the Instructional Data base. The scenarios from the course can be used to provide further training. The training data base clears off at the end of every week. As well F1 (online help) is a good tool for new users to access. It provides a good how to guide for performing functions within PROS.*
>
> …
>
> [Sgt. McAuley to the grievor, at 11:29 a.m.:]
>
> …
>
> *As requested here is some ability to go over what you were taught in class and the scenarios given. If you have concerns that can be reviewed.*
>
> …
>
> [*Sic* throughout]

[57] No screenshot was attached to the email chain entered into evidence, although Mc. Crowe's email references one.

[58] Entered into evidence was an email exchange between the grievor and Sgt. McAuley on February 25 and 26, 2015, which reads as follows:

> [The grievor to Sgt. McAuley, February 25 at 4:30 p.m.:]
>
> *Just wondering if you will be approving my request to take Friday off.*
>
> *My son has Thurs & Fri. off from school and I have to get a bunch of stuff done for him on Friday.*
>
> …
>
> [Sgt. McAuley to the grievor, February 26 at 9:14 a.m.:]
>
> …
>
> *As per our discussion, please follow up for clarification on the hours you have for this fiscal year as we may have to change the leave code if you are short.*
>
> *I have attached the basic duties and responsibilities for you to review. As you are still in learning stage all may not apply to you at this moment but this is what you should be striving to complete.*
>
> …

[59] No one explained the disconnect between the two emails in that the grievor's was about a leave request and the response, was about the duties and responsibilities of her job.

[60] The document attached to Sgt. McAuley's February 26, 2015, email reads as follows:

> *Duties and responsibilities of Detachment Administrative Assistants (P/S')*
>
> *The Detachment Clerks are accountable to Detachment Commander (Sgt.) and are responsible for the following duties as they are mandatory. Additional duties may be assigned to individual DSA's:*
>
> *1) supervising & maintaining entries on PROS, PSPS, OSR and CPIC*
>
> *2) processing incoming & outgoing mail and fax requirements*
>
> *3) phone & counter enquiries on a support basis.*
>
> *4) recording complaints & operating the police radio.*
>
> *5) maintaining office machines & equipment.*
>
> *6) providing other administrative & clerical support services to all the members.*
>
> *7) ensuring timely completion of requests left in the typing basket.*
>
> *8) administration of all local tenders and monitoring of work completed*
>
> *9) providing direct clerical support for the NCO/ic,*
>
> *10) maintaining the filing order of hard copy operational files*
>
> *11) administering monthly criminal record check bulk files*
>
> *12) administering monthly cost recovery initiatives*
>
> *13) fleet management and administration*
>
> *14) dedicated PROS information manager for the unit*
>
> *15) management of detachment archive material*
>
> *16) maintenance of detachment telephone list*
>
> *17) maintenance of required PIRS purging*
>
> *18) maintaining the filing order of hard copy operational files*
>
> *19) administering monthly criminal record check bulk files*
>
> *20) Pros Audits*
>
> *21) Viclas Audits*
>
> [*Sic* throughout]
>
> …

[61] No one at the hearing identified the source of that document or explained whether it already existed or someone in the Mayerthorpe detachment or elsewhere created it.

[62] No one at the hearing explained "Viclas"; nor is there any material setting out what it is. No one at the hearing explained a "Pros Audit" or if the training that the grievor received covered it.

[63] A portion of the entry in the McAuley notes dated March 4, 2015, states as follows:

> *2015/03/04*
>
> *Email from Victoria re: staying @ Alexis office*
>
> *Attended Alexis Sat. Office spoke to Victoria regarding concerns*
>
> *Stated she felt she was being picked on by Pat.* [Ms. Lakeman]
> *Stated she felt she was given conflicting information and being sabotaged.*
>
> …

[64] This entry was put to the grievor. She confirmed that she made the comment to Sgt. McAuley and explained that she had felt that Ms. Lakeman was not being fair. She said that what she meant by "unfair" was that many of the mistakes that Ms. Lakeman attributed to her when she worked on files were not her errors but had existed before her involvement with the files. She also said that Ms. Lakeman did not have time for her when she asked questions. She said that one person showed her how to do things and that later, Ms. Lakeman told her that it was not the correct way. She said that Mses. Rah and Jackson showed her how to carry out criminal records checks but that according to Ms. Lakeman, there were other steps. She stated that Ms. Lakeman asked her to do something, assuming that she had been shown how to do it. But she had not been shown.

[65] The grievor said that she sought assistance from whomever was available, including members. She said that the conflicting information she received was frustrating because different people did things differently.

[66] The grievor stated that as far as she knew, Sgt. McAuley did not do anything as a result of her March 4, 2015, discussion with him about Ms. Lakeman; nor did he ever follow up with her, to see if things had changed. The grievor said that she never met with Sgt. McAuley and Ms. Lakeman to discuss and address this issue. She said that her relationship with Ms. Lakeman never changed.

[67] On Thursday, April 30, 2015, the grievor began working at the Alexis office three days per week. She testified that on the following Monday (May 4, 2015), while at the Mayerthorpe detachment, she asked Sgt. McAuley if she could work four days per week in Alexis. He denied her request.

[68] The grievor testified that she had been unaware that that Mses. Lakeman, Rah, and Jackson were providing feedback to Sgt. McAuley.

[69] On Friday May 8, 2015, at the end of the grievor's workday, she met with Sgt. McAuley ("the May 8 meeting"). He gave her a letter dated that day ("the May 8 letter"). Its relevant portions state as follows:

> …
>
> *This letter confirms our discussion of 2015-05-04 regarding concerns about your performance at work.*
>
> - *You are expected to complete work as assigned and with the direction given without variation.*
> - *You are assigned to work in Mayerthorpe Detachment as well as ANSN Satellite Office.*
> - *At this time, you are expected to work in Alexis Tuesday-Wednesday-Thursday and in Mayerthorpe on Monday-Friday. I will determine when this schedule will change based on your performance/ability to work more independently.*
> - *You are expected to develop PROS knowledge and skills by participating in the developmental activities as previously discussed.*
> - *You are expected to demonstrate the core competencies of the federal public service, specifically working effectively with others, demonstrating integrity and respect, thinking things through and showing initiative and being action-oriented (see attached).*
>
> *Failure to comply with these expectations may result in your rejection on probation.*
>
> …

[70] Attached to the May 8 letter was a document entitled "Core Competencies". It appears to have been taken from another document and has four boxes with the following listed competencies set out at the right side of each box: "Demonstrating integrity and respect"; "Working effectively with others"; "Thinking things through"; and "Showing initiative and being action-oriented". Above the four boxes, it stated as follows:

> *CORE COMPETENCIES*
>
> ***These are identified in the performance agreement and are not subject to change. They describe the fundamental behaviours required to effectively perform any work as federal public servants. All employees must be assessed against these***

competencies, regardless of group or level. What follows are some typical behavioural criteria.

[71] The particulars of the specific criteria as set out in the four boxes are as follows:

Demonstrating integrity and respect

- *Behaving consistently with the Values and Ethics Code for the Public Sector.*
- *Working in a manner that reflects a commitment to client service excellence.*
- *Actively contributing to workplace well-being and a safe, healthy and respectful workplace.*
- *Supporting and valuing diversity and bilingualism.*
- *Acting with transparency and fairness.*
- *Demonstrating respect for government assets and resources, and using them responsibly, including by understanding and applying relevant government policies.*

Working effectively with others

- *Sharing information with work colleagues.*
- *Listening actively to the views of others, and respecting, considering and incorporating them.*
- *Recognizing the contributions and celebrating the successes of others.*
- *Working collaboratively and relating effectively to others, and embracing and valuing diversity.*
- *Demonstrating an understanding of the roles, responsibilities and workloads of colleagues, and being willing to balance personal needs with those of other team members.*
- *Eliciting trust, particularly by following through on commitments.*
- *Dealing proactively with interpersonal or personal matters that could affect their performance.*
- *Managing their own work-life balance and respecting that of others.*

Thinking things through

- *Planning and adjusting their work based on a thorough understanding of their unit's business priorities and their own work objectives, and seeking clarification and direction when uncertain or confused.*
- *Considering multiple sources of information before formulating a view or opinion.*

- *Exercising sound judgment and obtaining relevant facts before making decisions.*
- *Analyzing setbacks and seeking feedback to learn from mistakes.*

Showing initiative and being action-oriented

- *Staying up to date on team goals, work processes and performance objectives.*
- *Translating direction into concrete work activities, making the most of available time and resources.*
- *Maintaining a constructive attitude in the face of change, setbacks or stressful situations, and remaining open to new solutions or approaches.*
- *Communicating ideas, views and concerns effectively and respectfully and actively participating in exchanges of ideas with others.*
- *Identifying early warning signs of potential problems, and alerting the manager/supervisor and others, as needed.*
- *Embracing change and actively looking for opportunities to learn and develop professionally and personally.*
- *Contributing to and participating in process improvements and new approaches.*
- *Pursuing operational efficiencies, demonstrating an appreciation of the importance of value for money, including by willingly adopting new and more efficient ways of working.*

[72] There is no evidence that the document was ever given to the grievor in any form before she received it with the May 8 letter. Its source was not provided to the hearing and is not found in any other document entered as an exhibit at the hearing.

[73] Sgt. McAuley testified that he prepared the May 8 letter after speaking with Michelle Revet in public service staffing (the RCMP equivalent of human resources) and that it was based on notes he made of the May 8 meeting, which stated as follows:

…

1633 Served document on Victoria. Unaware of my concerns - stated she couldn't remember - advised we have had 4 meetings off top of head that I could remember. Advised to review again over weekend and hiring document to come back Monday to answer any questions or concerns.

Asked what rejection on probation meant. Advised if we could not get to a place where she was able to rectify deficiencies she would be terminated.

[*Sic* throughout]

…

[74] In his examination-in-chief, Sgt. McAuley was asked what else he recalled about the May 8 meeting. Referring to the May 8 letter, he stated that the grievor asked him what it meant. He said that he told her that it meant the termination of her employment. He also said that she told him that she was unaware of the shortcomings and that she was unhappy about receiving the May 8 letter.

[75] In his examination-in-chief, Sgt. McAuley was asked whether the grievor's performance improved after she received the May 8 letter. He said that it regressed. He was then asked what he decided to do. He replied that in consultation with public service staffing (Ms. Revet), he recommended rejecting the grievor on probation.

[76] Ms. Lakeman testified that she never saw the May 8 letter.

[77] The grievor testified that after receiving the May 8 letter, no one from the employer provided her with any help overcoming the difficulties identified by Sgt. McAuley. She said that he did not explain to her what she was doing wrong or how to correct it. She said that she received no training after receiving the letter. She said that no one sat down with her and provided her with any assistance whatsoever.

[78] Both the grievor and Cst. Paddick testified that civilian employees at the Mayerthorpe detachment had a discriminatory attitude toward indigenous peoples in general, usually in the form of jokes or inappropriate comments. Cst Paddick stated that all the members, including Sgt. McAuley, would have been aware of it.

[79] At the hearing, Cst. Paddick did not identify as having an indigenous or a First Nations heritage.

[80] Both the grievor and Cst. Paddick provided the example of an ongoing racial slur directed at a specific individual (not the grievor) of indigenous heritage. Cst. Paddick stated that the detachment office was small and that everyone could hear everything. She stated that the slur directed against that individual was well known and that all the members knew it, including Sgt. McAuley. Both he and Ms. Lakeman denied ever hearing it. They suggested that the grievor and Cst. Paddick took comments that might have sounded disparaging with respect to First Nations peoples or specific individuals out of context.

[81] Cst. Paddick testified that she was uncomfortable giving evidence at the hearing as she had filed a harassment complaint against Sgt. McAuley. The details of the complaint and its findings were not provided to me, although Cst. Paddick stated that the complaint was determined to be founded.

[82] Cst. Paddick testified that at one point (exactly when, she could not recall) Sgt. McAuley instructed her specifically not to assist or guide the grievor because the grievor was to be fired. In her evidence, the grievor confirmed that Cst. Paddick had told her as much when it happened, which was in or about May of 2015.

[83] Cst. Paddick also testified that she brought concerns to Sgt. McAuley about what she had seen of how the grievor was being treated in the office and that she felt that Mses. Rah and Lakeman were not giving the grievor good direction and were not helping her. She said that his reaction was to state that the grievor was not smart and that she would be fired.

[84] The grievor testified that she overheard Sgt. McAuley make a comment about how great it would be if the RCMP did not have to deal with Alexis. When she was asked when she heard him say it, she said that she believed it was sometime in March of 2015. She stated that she found his comment hurtful because if he felt that way about the people in Alexis, it would include her, because she was from there.

[85] Entered into evidence was a copy of an email chain. The initial email was from RCMP Inspector Honey Dwyer to Crystal Borden of the Respectful Workplace Program in the Employee & Management Relations Office of the RCMP's K Division in Edmonton and potentially to others (the email is unclear on this). The last email was from Sgt. McAuley to Ms. Revet. The chain is as follows:

> [Inspector Dwyer to Ms. Borden, June 2, 2015, at 11:34 a.m.:]
>
> *Good afternoon everyone,*
>
> *This email is being sent on behalf of Victoria ALexis who is a PSE at the Alexis FN (Mayerthorpe Detachment). Victoria would like to resolve some workplace issues and would like to have someone from outside the office mediate. Furthermore, she would like to have someone from PS HR provide her with what her duties are as she advises that this wasn't made clear when she was hired.*
>
> *Victoria is cc'd in this email as she is aware that I was sending this out for her.*

> If you have any questions, please do not hesitate to contact myself directly.
>
> [*Sic* throughout]
>
> [Ms. Borden to unclear recipients, June 2, 2015, at 11:49 a.m.:]
>
> …
>
> *Thank you for bring this to our attention. I will consult with my supervisor regarding a mediator.*
>
> [Sgt. McAuley to Ms. Revet, June 2, 2015, at 11:59 a.m.:]
>
> *Michelle,*
>
> *When you have a minute could you please call me at the office.*
>
> *Scott*
>
> …

[86] The grievor was shown that email chain and was asked if she knew the context of how it came about. She stated that she had contacted Alex Coutreville at the RCMP's K Division Aboriginal Policing Services. She said that she did so because she felt that she did not have anyone she could speak with at the detachment. She said that he suggested that she speak to Sgt. McAuley about her concerns with Ms. Lakeman, but because nothing came of it, he provided her with Inspector Dwyer's contact information. She said that she took this route because she did not feel that she was being listened to with respect to her concerns about work and the detachment, particularly the comments about First Nations peoples, and specifically about her difficulties with Ms. Lakeman.

[87] The grievor stated that she was never able to speak to anyone about these concerns because she was terminated on June 5, 2015.

[88] In their evidence, both Sgt. McAuley and Ms. Lakeman suggested that, in not so many words, the grievor was difficult as well as impolite and belligerent in her demeanour. The McAuley notes dated September 25, 2014, state as follows:

> *2014/09/25*
>
> *(9:30) Spoke to Victoria Alexis re Alexis PS Spot. Very emotional and belligerent regarding position and would follow up on current position and contact … (S/SGT). message left.*

[89] Ms. Ryan stated that before terminating the grievor, she had never met her. She said that her first involvement with the grievor's employment situation came when she received a briefing note from Ms. Revet, which was not produced into evidence.

[90] Ms. Ryan identified the issues as the grievor's ability to handle the routine tasks required of a DSA, including taking down information about traffic accidents, entering data into PROS, taking information on the telephone, and ensuring the thoroughness of the information she gathered, and stated that generally, she was not at the level required to do the job.

[91] Identifying the process she went through in her decision to terminate the grievor, Ms. Ryan said that such a decision is serious and requires much analysis and careful consideration. She said that she wanted to be sure that the grievor had received the proper training, that she had been able to ask questions, and that she had been given a chance to succeed. Ms. Ryan stated that once she had been provided with information that the grievor had been provided with training and supervision and a good understanding of what the job entailed, she felt that termination was necessary.

[92] Ms. Ryan identified the June 5 letter and stated that the reasons it enumerated were consistent with the analysis she had provided in her evidence at the hearing. While she stated that she was aware of the May 8 letter, she confirmed that she had never seen it.

[93] In cross-examination, Ms. Ryan stated that the decision to terminate the grievor's employment had been hers and that the information used to terminate the grievor was based on the briefing note and information provided by Ms. Revet. She stated that she did not discuss the matter with Sgt. McAuley and that she believed that Ms. Revet had drafted the briefing note.

[94] Ms. Revet did not testify.

[95] A copy of the TB's "Guidelines for Termination or Demotion for Unsatisfactory Performance; Termination or Demotion for Reasons Other than Breaches of Discipline or Misconduct; and Termination of Employment During Probation" was entered into evidence, the relevant portions of which state as follows:

> ***1. Context***
>
> *These guidelines replace the following Guidelines issued on April 1, 2005:*
>
> …
>
> • Guidelines for Rejection on Probation

…

These guidelines support the principles set out in the Policy Framework for People Management *by providing advice that will foster sound people management practices across the core public administration*

…

2. Target Audience and Purpose

These guidelines assist human resources advisors in the core public administration in their role of providing advice and guidance to management in situations such as the following:

…

• Termination of employment during probation is being considered.

…

3. General

…

c. In making a decision to terminate employment during the probationary period, the following guiding principles are key:

- *The employee on probation knows the specific job duties and requirements of the position;*
- *The employee on probation is aware of the required standard(s) of performance and appropriate conduct:;*
- *The employee on probation receives feedback when performance or conduct requires improvement; and*
- *The employee on probation receives the appropriate training for the position.*

The probationary period is to assess the suitability of the employee for the position for which he or she has been hired. This assessment can include an evaluation of the following, as appropriate:

- *The employee's reliability, including attendance at work;*
- *The employee's compatibility with colleagues or clients;*
- *The employee's ability to meet work requirements, including those associated with the workload; and*
- *The employee's ability to adhere to established policies, procedures, practices and codes of conduct.*

Please be mindful of jurisprudence which has established that a decision to proceed with a termination of employment during probation should be based on objective and demonstrable grounds and must not be made arbitrarily, in a discriminatory manner, or in bad faith. That is, a manager or supervisor should be satisfied

> *that the employee is not suitable for the position, and should be able to demonstrate that he or she has acted in good faith based on the employee's unsuitability for the position. The grounds for such a decision could include unsatisfactory performance or misconduct.*
>
> *The employee is to be notified by the delegated manager in writing of the decision to proceed with a termination of employment during probation, stating the reason for the decision and the effective date.*
>
> …

[96] Ms. Ryan was shown a copy of the guidelines. She stated that she was familiar with them. However, she could not say if she consulted them when she determined that she would terminate the grievor's employment.

[97] Ms. Ryan said that she decided to terminate the grievor's employment sometime in May or June of 2015. When she was asked when she signed the June 5 letter, she was brought to an email from Ms. Revet to Sgt. McAuley dated May 20, 2015, at 6:44 p.m., stating as follows:

> …
>
> *The CO has approved and already signed the letter. Sgt. McAuley, when you are back in the office next week, let's finalize the process and get ready to present the letter on June 5th, as planned (well unless she has had a complete turnaround and you decide not to reject her yet).*
>
> …

[98] When she was shown that email, Ms. Ryan confirmed that she signed the June 5 letter on May 20, 2015, which was a Wednesday.

[99] In the same email chain that included the quoted email sent on May 20 was an earlier email exchange between Ms. Revet and Sgt. McAuley on May 19 and 20, 2015, which states as follows:

> [Ms. Revet to Sgt. McAuley, May 19, 2015, at 6:02 p.m.:]
>
> …
>
> *Can you review the BN* [briefing note] *and letter for the CO before I finalize/send them off? Are you good with the content or do you have any changes/revisions you would like to see?*
>
> …
>
> [Sgt. McAuley to Ms. Revet, May 20, 2015, at 9:21 a.m.:]

> *I am in Manitoba for court. I reviewed and am good with what is written*
>
> …

[100] In cross-examination, Ms. Ryan was also asked if it was her understanding that she would sign it, that the June 5 letter would not be issued, and that the employer might decide to retain the grievor. She responded, "I would have thought they would have let me know if something new had come up."

[101] Also in cross-examination, Ms. Ryan was asked if had she known that the grievor had not received any additional training or coaching, her decision would have changed. She stated: "I would hope there would be continued efforts to work with her and develop her and that it would not have been a paper exercise." In cross-examination, she confirmed that she was not aware that the grievor had had no performance plan. When she was asked if had she known that, her opinion would have changed, she said: "Not necessarily; I would expect there is documentation of deficiencies and set-out goals. I am not sure I would know what a performance plan for someone on probation would look like."

[102] There are no entries in the McAuley notes after Sgt. McAuley gave the grievor the May 8 letter.

[103] While the Lakeman notes contain entries for May 29 and June 1 through 3, there is no evidence that after the May 8 meeting, Ms. Lakeman met or briefed Sgt. McAuley about the grievor's performance before Ms. Ryan signed the June 5 letter.

[104] There is no evidence that Sgt. McAuley met with the grievor after the May 8 meeting and before he provided his recommendation to Ms. Revet, who prepared the briefing note and June 5 letter for Ms. Ryan to review and sign.

[105] The June 5 letter was reviewed with Sgt. McAuley at the hearing. When he was asked about guidance and supervision, as referenced in the letter, he stated that it had been provided by him and Ms. Lakeman and via PROS training. He said that he felt that reasonable assistance, guidance, and supervision had been provided to the grievor.

[106] In cross-examination, when it was put to Sgt. McAuley that his opinion was that the grievor had not improved her performance, he responded by stating that she had not improved as much as she should have. He then stated, "This would be her [Ms. Ryan's] review of the file." When counsel asked if that was his view, he stated:

"I recommended but it is her decision. I provided a recommendation through the briefing note."

[107] In cross-examination, when he was asked what he did to ensure that the grievor received additional training, guidance, and supervision, he stated that it would have been feedback from Ms. Lakeman. When it was put to Sgt. McAuley that Ms. Lakeman did not know about the May 8 letter, he said that it was unlikely but possible.

[108] The evidence disclosed that the grievor received the equivalent of two weeks of pay for June 4 to 17, 2015.

[109] The grievance stated as follows:

> ***Grievance details:***
>
> *I grieve the letter of termination of employment dated 15-06-05 signed by M. C. Marianne Ryan, M.O.M. Consultation is requested with my Labour Relations officer on this grievance at the final level of the grievance procedure.*
>
> ***Corrective action requested:***
>
> *I request that the above noted letter be immediately withdrawn, all copies destroyed in my presence, reinstatement without loss of pay and benefits and that I be made whole.*

[110] The grievance was referred to the PSLREB for adjudication on March 9, 2015, by the filing of a Form 21 under the *Regulations*, the relevant portions of which are as follows:

> …
>
> ***12. Provision of the* Public Service Labour Relations Act *under which the individual grievance is referred to adjudication:***
>
> ***X*** *209(1)(*b*)* *Disciplinary action resulting in termination, demotion, suspension or financial penalty.*
>
> ***X*** *209(1)(*c*)(i)* *Demotion or termination of an employee in the core public administration under paragraph 12(1)(*d*) of the* Financial Administration Act *for unsatisfactory performance or under paragraph 12(1)(*e*) of that Act for any other reason that does not relate to a breach of discipline or misconduct.*
>
> …

[111] On March 15, 2016, the Board's registry wrote to the parties, using the standard template, acknowledging receipt from the grievor through her bargaining agent, the Public Service Alliance of Canada (PSAC), of the reference of her grievance to adjudication. The letter also stated as follows:

…

> *The party to a grievance who raises an issue involving the interpretation or application of the* Canadian Human Rights Act *shall provide the Canadian Human Rights Commission with a* Notice to the Canadian Human Rights Commission *(Form 24 of the* Regulations*), pursuant to subsection 92(1) of the* Regulations.

…

[112] On June 3, 2016, the employer provided a copy of its responses at both the second and final levels of the grievance procedure. The second-level response is dated September 8, 2015, and its relevant portions state as follows:

…

> *I have considered the arguments put forth by you and your union representative, Lois Greenhalgh, along with the supporting material you submitted before and during the grievance hearing held on August 26, 2015.*
>
> *In preparing to render my decision, I carefully reviewed the circumstances giving rise to terminate [sic] your employment during the probationary period. I confirmed that management did advise you of the specific job duties and requirements of the position, that you were made aware of the required standards of performance and appropriate conduct, that you received feedback when performance and conduct required improvement, and that you received training for the position. I have concluded that this decision was based on objective and demonstrable grounds and was not made arbitrarily. As such, I remain confident in my decision to terminate your employment for reasons of unsuitability.*

…

[113] The final-level grievance response is dated February 2, 2016, and its relevant portions state as follows:

…

> *I conclude that your supervisory team made you aware of the concerns regarding your performance on multiple occasions during your period of employment, and that you were provided with many opportunities to improve your performance as well as for additional training. I am confident that the decision to proceed with the termination of your employment during probation was for reasons of unsuitability based on objective and demonstrable grounds and we not made arbitrarily, in a discriminatory manner, or in bad faith.*

…

[114] This matter was originally scheduled for a hearing from October 18 to 21, 2016, in Edmonton. However, due to unforeseen events, it was postponed.

[115] On August 7, 2019, the bargaining agent forwarded to the Board a letter almost identical to the one dated March 9, 2015, which had referred the grievance to adjudication. The later one had the following differences:

- In the first paragraph, where it refers to the enclosure of "… two … copies of the Form 21 for reference to adjudication …", added after the words "Form 21" were the words "**and 24**" (emphasis in the original).

- A new second paragraph was added, which reads as follows:

> ***Since this grievance raises an issue involving the interpretation or application of the* Canadian Human Rights Act*, we have sent the Form 24 to the Canadian Human Rights Commission.***
>
> [Emphasis in the original]

- The final paragraph was amended by changing the identity of the contact person, who was by then Ms. Laframboise-Carignan.

[116] The Form 24 sent with the August 7, 2019, letter stated as follows:

> …
>
> ***Description of the issue involving the interpretation or application of the* Canadian Human Rights Act *and of the alleged discriminatory practice or policy:***
>
> *Prejudicial attitudes towards First Nations people were pervasive in the workplace. These prejudicial attitudes affected the employer's assessment of the grievor's performance and were a factor in the decision to terminate her employment.*
>
> ***Prohibited ground of discrimination involved:***
>
> *The prohibited grounds of discrimination involved are: race and national or ethnic origin.*
>
> ***Corrective action sought:***
>
> *That the grievance be allowed with an order for reinstatement with full compensation.*
>
> …
>
> [Emphasis in the original]

[117] On August 16, 2019, the Board received correspondence from the Canadian Human Rights Commission (CHRC) stating that it would not participate in this matter.

II. Summary of the arguments

A. For the respondent

1. The employer's objection to the amended referral to adjudication

[118] The grievor could not expand the scope of the grievance. At the 11th hour, she attempted to expand and reformulate it. This occurred on August 7, 2019, when her bargaining agent sent the Form 24 notice to the CHRC and the Board. The Form 24 alleged that "[p]rejudicial attitudes towards First Nations people were pervasive in the workplace. These prejudicial attitudes affected the employer's assessment of the grievor's performance and were a factor in the decision to terminate her employment."

[119] The respondent referred me to *Boudreau v. Treasury Board (Department of National Defence)*, 2010 PSLRB 100 at para. 35, which stated, "As a general rule of natural justice, the employer should not at adjudication be required to defend against a substantially different characterization of the issues than it encountered during the grievance procedure." The allegation has to be asserted to such an extent that the employer knows the issues and the case it has to meet. The respondent also referred me to *Burchill v. Attorney General of Canada*, [1981] 1 F.C. 109 (C.A.).

2. The employer's objection to the Board's jurisdiction under s. 211 of the *Act*

[120] Sections 61 and 62 of the *PSEA* provide the employer with the right to a probationary period. Section 211 of the *Act* provides that terminations falling under the *PSEA* cannot be referred to adjudication under the *Act*. *Jacmain v. Attorney General of Canada*, [1978] 2 SCR 15, acknowledged that the employer has a broad right to reject an employee on probation. The Board's jurisdiction in such cases is very limited.

[121] The question to be answered is whether the grievor was rejected on probation under the *PSEA*. The respondent referred me to *Canada (Attorney General) v. Penner*, [1989] 3 F.C. 429 (C.A.), which provides that in the case of a rejection on probation, an adjudicator under the *Act* is entitled to determine if it is what it appears to be, and nothing else.

[122] The respondent also referred me to *Canada (Attorney General) v. Leonarduzzi*, 2001 FCT 529, *Tello v. Deputy Head (Correctional Service of Canada)*, 2010 PSLRB 134, *Ducharme v. Deputy Head (Department of Human Resources and Skills Development)*,

2010 PSLRB 136, *Dyck v. Deputy Head (Department of Transport)*, 2011 PSLRB 108, and *Boyce v. Treasury Board (Department of National Defence)*, 2004 PSSRB 39.

[123] The grievor was terminated while on probation and was compensated in lieu of notice. The respondent met its burden of proving that she was not suitable for the position. Its position is that she did not demonstrate that the termination was a sham, camouflage, in bad faith, or arbitrary. She also did not establish discrimination on the prohibited ground of race or national origin.

[124] The respondent submitted that it is not up to the Board to examine the procedures. It referred me to *McMorrow v. Treasury Board (Veterans Affairs)*, PSSRB File No. 166-02-23967 (19931119), [1993] C.P.S.S.R.B. No. 192.

[125] The grievor must establish bad faith on a balance of probabilities. The respondent referred me to *Chaudhry v. Treasury Board (Correctional Service of Canada)*, 2005 PSLRB 72, and *Kagimbi v. Canada (Attorney General)*, 2015 FCA 74, which held that the employer has to believe in good faith that the grievor was not up to the task.

[126] *Melanson v. Deputy Head (Correctional Service of Canada)*, 2009 PSLRB 33, stands for the proposition that not each and every reason for a termination of employment or rejection on probation need be proven. It also holds that the fact that a grievor was not warned that he or she could be terminated during the probationary period is not sufficient to warrant setting aside a rejection on probation and that it is enough that a probationary employee was given sufficient warning of performance-related concerns.

[127] *Maqsood v. Treasury Board (Department of Industry)*, 2009 PSLRB 175, stands for the proposition that an employer can define the expectations according to which the suitability of a probationary employee will be assessed and that it can formulate the process for determining whether the employee meets those expectations. The grievor in this case was provided with a list of her duties and responsibilities; no formal review process for determining expectations was required.

[128] *Maqsood* also stands for the proposition that the grievor's burden of proof is different from that of the employer. The grievor must establish on a balance of

probabilities that the rejection on probation was a sham or camouflage and that the employer acted in bad faith.

[129] *Ricard v. Deputy Head (Canada Border Services Agency)*, 2014 PSLRB 72, provides that the probation period is designed to assess a new employee's suitability for a position. As set out in both *Penner* and *Tello*, the assessment is not only limited to work performance or production but also may relate to character and general suitability.

[130] The exacting, time-sensitive work tasks were not a good match to the grievor's skill set. Both Sgt. McAuley and Ms. Ryan testified as to the reasons for the rejection on probation and stated that they were the only reasons. The grievor's noted deficiencies with respect to specific tasks were mentioned to her. She had difficulty following directions and prioritizing. She had trouble responding to basic phone inquiries and had challenges using the PROS software and making transcriptions. She also had difficulty working cooperatively. She was given ongoing advice, yet her work did not improve. The employer's assessment was that she was not up to the task.

[131] Ms. Lakeman was assigned as the grievor's mentor. She was a CR-05; at the time at issue, she had 30 years of experience. She testified and produced the Lakeman notes. She worked with the grievor daily and conveyed her concerns to Sgt. McAuley. She described the grievor as argumentative and stated that the grievor took offence to advice provided to her.

[132] Ms. Lakeman stated that she gives everyone a fair chance and that the grievor's race had nothing to do with it. Ms. Lakeman has a keen appreciation for precision and accuracy. The grievor had a number of issues with respect to assignments and tasks.

[133] The grievor was given extensive on-the-job training and precise instructions. Ms. Lakeman intervened very often. The grievor was told not to circumvent Ms. Lakeman. The relationship between Ms. Lakeman and the grievor became strained; the grievor viewed Ms. Lakeman as picking on her and targeting her. However, Ms. Lakeman acted in no way other than in good faith and wanted to ensure that the work was performed properly.

[134] The grievor received formal and informal training. With respect to the PROS training, Sgt. McAuley was told that she struggled.

[135] Sgt. McAuley testified that the grievor did not demonstrate the skills required, that she was not open to feedback, and that sometimes, she was argumentative. The evidence disclosed that he met with her four times. It also disclosed that he offered her more PROS training. He gave her a list of her duties and responsibilities. He stated that he did not notice any significant improvement in her performance. He stated that she was confrontational and that she did not take criticism well.

[136] Sgt. McAuley decided that the grievor was not suitable with respect to the position and made the decision, in conjunction with labour relations, to reject her on probation. The decision was based on employment-related reasons that the respondent demonstrated.

[137] The grievor's racial discrimination allegations are serious and should not be taken lightly. The respondent referred me to *Taticek v. Treasury Board (Canada Border Services Agency)*, 2015 PSLREB 12. It was incumbent on the grievor to establish a *prima facie* case. *Québec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center)*, 2015 SCC 39, clarifies what a *prima facie* case means, which was also addressed in the Board's decision in *Kirlew v. Deputy Head (Correctional Service of Canada)*, 2017 FPSLREB 28.

[138] The respondent recognized that prejudicial attitudes had been referred to and that there was some evidence that disparaging comments were made. However, no *prima facie* case has been made out. A connection must be established that the grievor's race was a factor in the rejection on probation. Nothing was based on the fact that she was a First Nations individual.

[139] The respondent's witnesses were credible.

[140] Sgt. McAuley did not recall making comments attributed to him about a missing indigenous woman and budget monies. He never ignored a case; nor did he withhold resources. With respect to the comment attributed to him that his life would be easier without the Alexis Nakota Sioux Reserve being part of the detachment's responsibilities, he explained that comment and stated that it had been taken out of context. He supervised many employees, including those from First Nations. It was in the RCMP's interest to have an employee of First Nations heritage in the position at issue, as the Mayerthorpe satellite office was on the Alexis Nakota Sioux Reserve.

[141] The respondent referred me to *Dawson v. Canada Post Corporation*, 2008 CHRT 41, which stands for the proposition that the belief that one is being discriminated against is not sufficient in law to give rise to an inference of discrimination or to establish a *prima facie* case of discrimination.

[142] The respondent met its burden of proof. The grievor did not meet her burden of proof, and the respondent requested that the grievance be dismissed for lack of jurisdiction.

B. For the grievor

1. The employer's objection to the amended referral to adjudication

[143] In 2016, the bargaining agent advised the employer of the comments that were being made about the grievor's race and heritage.

2. The employer's objection to the Board's jurisdiction under s. 211 of the *Act*

[144] The grievor was the only employee of First Nations heritage at the Mayerthorpe detachment. After a member of First Nations heritage left the Alexis satellite office, she was the only one in either location.

[145] The grievor reported to Sgt. McAuley; however, he assigned Ms. Lakeman to be her mentor. Most of the training the grievor received was from two part-time employees, Ms. Rah and Ms. Jackson. At some point, Ms. Lakeman started to assign the grievor tasks.

[146] The grievor and Sgt. McAuley had informal discussions. She never had the impression that her performance was unacceptable until she received the May 8 letter. Before then, she had raised issues with Sgt. McAuley about her relationship with Ms. Lakeman in that she felt that Ms. Lakeman had picked on her and had treated her differently than she had other employees. Sgt. McAuley took no action.

[147] In addition to the strained relationship with Ms. Lakeman, the grievor felt unwelcome. Cst. Paddick told the grievor that Sgt. McAuley had told her not to help the grievor and that Sgt. McAuley had said that his life would be easier if he did not have to deal with First Nations peoples. These comments made the grievor uncomfortable because she was a First Nations woman who lived in Alexis.

[148] Sgt. McAuley became angry with the grievor when she asked to work four days per week at the Alexis satellite office. Four days after that, he gave her the May 8 letter.

[149] The grievor was not provided with any improvement plan. No discussion was held with her about how to fix any shortcomings. After receiving the May 8 letter, things deteriorated, so much so that she contacted the Office of the Respectful Workplace. Three days later, she was terminated.

[150] While Ms. Lakeman stated that she was assigned as the grievor's mentor, that she was in charge of training the grievor, and that she would report to Sgt. McAuley about the grievor's performance, she was out of the office two out of every five days per week. In fact, Mses. Rah, Jackson, and Thibault largely trained her. While Ms. Lakeman did say she that she carried out some of the grievor's training, she also admitted that she was removed from that training when Ms. A arrived, shortly after the grievor started.

[151] There was no standard training checklist. Ms. Lakeman could not ascertain what the grievor was trained in or how those in the office covered that training. With respect to telephone inquiries, the grievor was not provided with a handout as to what to ask.

[152] Ms. Lakeman conceded that she did not take or make any notes, like the Lakeman notes, about any other employee.

[153] Ms. Lakeman did not know that the grievor had received the May 8 letter.

[154] Sgt. McAuley said that he assigned Ms. Lakeman as a mentor to the grievor and that he received feedback from Mses. Lakeman, Rah, and Jackson about the grievor's performance; however, he never raised any concerns with the grievor. He spoke only of common themes. The Lakeman notes were never shared with the grievor; nor did Mses. Rah or Jackson provide any comments or notes.

[155] Sgt. McAuley confirmed that other than the May 8 letter, the grievor received no formal notice with respect to her performance deficiencies. No formal review was put in place; nor was a plan made to help her improve her performance. When she raised concerns about the strained relationship with Ms. Lakeman, Sgt. McAuley told her to go to Ms. Lakeman for direction and then issued the May 8 letter citing three performance issues.

[156] In cross-examination, Sgt. McAuley agreed to the following:

- an employee should be given a chance to rectify deficiencies;
- he did not organize extra training for the grievor;
- he left it to Ms. Lakeman to provide the grievor with feedback;
- he did not meet with the grievor after the May 8 letter and before her termination; and
- he recommended the grievor's termination.

[157] Ms. Ryan testified that the decision to terminate the grievor's employment had been hers. She said that she signed the June 5 letter on May 20, 2015, which in effect was rubber-stamping it. She never provided the grievor with any mentoring or guidance. The decision to terminate the grievor was based on information she had received from public service staffing, which had received it from Sgt. McAuley. Ms. Ryan did not discuss the issue with Sgt. McAuley; nor did she have any discussions with the grievor.

[158] Ms. Ryan was unaware that the grievor had not been provided with any additional training after the May 8 letter. She was also unaware that no performance plan had been put in place for the grievor.

[159] Cst. Paddick testified that both Mses. Lakeman and Jackson were dismissive of the grievor and that they did not assist her. When she raised it with Sgt. McAuley, he told her not to help the grievor and that the grievor was not smart and would be fired. She also testified that he was discriminatory to First Nations persons, as were some of the other public service staff. She said that she heard inappropriate jokes about First Nations peoples and about a specific person (not the grievor).

[160] The grievor's testimony was credible. While at times she had difficulty recalling some details, given the passage of time, she thought she was doing well in her job, although she did admit that she had some challenges. She stated that she received her training from whomever was available; there was no fixed schedule or process. This meant that if she had questions, she would ask whomever was around. Her evidence was that Mses. Rah and Jackson provided her with the majority of the training, while

Ms. Thibault taught her how to do transcriptions. Her only formal training was on PROS.

[161] While Ms. Lakeman started to assign the grievor work in February of 2015 and would point out mistakes, she did not point out how to carry out the tasks properly. Sgt. McAuley raised issues informally and never told the grievor that her performance was unacceptable; he did it only when he presented her with the May 8 letter. She was never shown any comments about her performance that Mses. Lakeman, Rah, and Jackson had brought to Sgt. McAuley's attention. She stated that he never specifically explained problems, what she had to do to improve with respect to PROS, or how to become more proficient.

[162] After receiving the May 8 letter, the grievor's work situation became worse. Neither Sgt. McAuley nor Ms. Lakeman followed up to describe the areas of improvement for her. She said that she had issues negotiating the tense work environment, about which nothing was done, despite her raising issues. It was an uncomfortable atmosphere for her after she heard the comments attributed to Sgt. McAuley about her and First Nations.

[163] The grievor referred me to *Penner*, *McMorrow*, *Dhaliwal v. Treasury Board (Solicitor General Canada - Correctional Service)*, 2004 PSSRB 109, *Dyson v. Deputy Head (Department of Fisheries and Oceans)*, 2015 PSLREB 58, and *Frezza v. Deputy Head (Department of National Defence)*, 2018 FPSLREB 18.

[164] The June 5 letter stated that efforts were made to improve the grievor's performance and that feedback was provided. As set out in *Dyson*, the reason provided must be legitimate, not just something that could be employment related; it must point to substance. The grievor made errors in the process of learning; Ms. Lakeman admitted that everyone made mistakes. However, unbeknownst to the grievor, the employer used those mistakes to build a file to reject her on probation. While Sgt. McAuley raised areas of improvement, he did not provide her with any way to respond, so she could not improve. Contrary to what was said in the June 5 letter, she was not provided with any training.

[165] Sgt. McAuley did not meet with her after she received the May 8 letter and before she was terminated. He left that to Ms. Lakeman; however, he never advised Ms. Lakeman of the May 8 letter. While he agreed that employees on probation should

be given a chance to correct their performance, how can they if no steps are taken to tell them what is wrong and how to fix problems? How could the grievor correct her mistakes if 12 days after the May 8 letter, her employment was terminated?

[166] Even if an employer can demonstrate an employment-related reason for a rejection on probation, if bad faith can be shown, it overrides that reason.

[167] The grievor submitted that bad faith has been shown in the following ways:

- no appropriate or other training was provided to her;
- the training provided was ad hoc, depending on who was available;
- Ms. Lakeman, her mentor, was away two days per week, and she was trained by part-time and casual employees;
- the grievor lacked a go-to person for training and went to whomever was available, which led to her receiving conflicting information and meant that she did things differently, which Ms. Lakeman provided as a reason that the grievor's performance was not up to par;
- there were no guidelines such that training would be consistent;
- she and Ms. Lakeman had personal issues;
- the May 8 letter identified three areas of improvement, but after the employer gave the grievor the letter, it did nothing to help her, including no additional aid and no training or follow up on how she was doing;
- after the May 8 letter, no indication was made that she had performance issues, as there is nothing about any such issues in the McAuley notes or the Lakeman notes;
- Sgt. McAuley based his decision to terminate the grievor on a cleaning incident, which was certainly not a performance issue or part of her DSA duties;
- the decision to terminate her was made 12 days after the May 8 letter was issued, and it was made without giving her sufficient time to improve her performance;
- the June 5 letter was delivered just after the grievor had reached out to the Office of the Respectful Workplace about her work environment;

- she was uncomfortable in her work environment because of Sgt. McAuley's comments about First Nations peoples in general and about her specifically; and
- the employer failed to follow its guidelines for terminating an employee while on probation.

[168] As set out in *Dhaliwal*, a failure by the employer to abide by its own guidelines can be a sign of bad faith.

[169] The employer's attitude toward First Nations peoples affected the grievor's training in comparison to that of another employee who was not a First Nations person and who received much more training from Ms. Lakeman. The attitudes toward First Nations peoples influenced how her colleagues treated the grievor, which contributes to the position that the rejection on probation was done in bad faith.

[170] The decision to terminate the grievor was not only made in bad faith; it was also camouflaged discipline because she did the following:

- raised with Sgt. McAuley her difficulties with Ms. Lakeman;
- asked Sgt. McAuley if she could work four days a week in Alexis; and
- raised her workplace difficulties with the Office of the Respectful Workplace.

[171] The grievor submitted that the Board has jurisdiction to hear the grievance. She seeks reinstatement into her DSA position in Mayerthorpe and Alexis and compensation for all her losses.

C. The respondent's reply

[172] With respect to the cleaning incident, according to Sgt. McAuley, it was the last straw. It was not the issue of the cleaning but of the grievor defying instructions. It was about that and about the grievor's inability to work with others.

[173] With respect to adequate training and feedback, the Board should take into account the contemporaneous notes, which are the Lakeman notes, in which Ms. Lakeman indicated that she assigned the grievor work and then checked her progress.

[174] The employer challenged the assertion that the grievor was not provided details. She was provided with the job description and the list of duties, and she received regular feedback, as set out in the Lakeman notes.

III. Reasons

A. The employer's objection to the amended referral to adjudication

[175] Section 209 of the *Act* deals with the reference of grievances to adjudication. The time frame for an employee to refer a grievance to adjudication is set out in s. 90 of the *Regulations*, which states as follows:

> ***Deadline for reference to adjudication***
>
> ***90 (1)*** *Subject to subsection (2), a grievance may be referred to adjudication no later than 40 days after the day on which the person who presented the grievance received a decision at the final level of the applicable grievance process.*
>
> ***Exception***
>
> ***(2)*** *If no decision at the final level of the applicable grievance process was received, a grievance may be referred to adjudication no later than 40 days after the expiry of the period within which the decision was required under this Part or, if there is another period set out in a collective agreement, under the collective agreement.*
>
> [Emphasis in the original]

[176] Nothing in the *Act* or the *Regulations* specifically addresses amending a referral to adjudication. However, s. 61 of the *Regulations* states as follows:

> ***Extension of time***
>
> ***61*** *Despite anything in this Part, the time prescribed by this Part or provided for in a grievance procedure contained in a collective agreement for the doing of any act, the presentation of a grievance at any level of the grievance process, the referral of a grievance to adjudication or the providing or filing of any notice, reply or document may be extended, either before or after the expiry of that time,*
>
> ***(a)*** *by agreement between the parties; or*
>
> ***(b)*** *in the interest of fairness, on the application of a party, by the Board or an adjudicator, as the case may be.*
>
> [Emphasis in the original]

[177] Section 210 of the *Act* states as follows:

> ***Notice to Canadian Human Rights Commission***

> ***210 (1)*** *When an individual grievance has been referred to adjudication and a party to the grievance raises an issue involving the interpretation or application of the* Canadian Human Rights Act*, that party must, in accordance with the regulations, give notice of the issue to the Canadian Human Rights Commission.*
>
> ***Standing of Commission***
>
> ***(2)*** *The Canadian Human Rights Commission has standing in adjudication proceedings for the purpose of making submissions regarding an issue referred to in subsection (1).*
>
> [Emphasis in the original]

[178] Section 92(1) of the *Regulations* addresses the notice to be given to the CHRC and states as follows:

> ***Notice to Canadian Human Rights Commission***
>
> ***92 (1)*** *A notice of a human rights issue under subsection 210(1), 217(1) or 222(1) of the Act shall be given to the Canadian Human Rights Commission in Form 24 of the schedule together with a copy of the grievance and the notice of the reference to adjudication.*
>
> ***Copies of notice***
>
> ***(2)*** *The person who gives the notice shall send a copy of it to the Board, the other party, any intervenors and every person in receipt of a copy of the notice of the reference to adjudication by virtue of section 4, unless that person has notified the Board in writing that the person does not wish to receive a copy of subsequent documents.*
>
> [Emphasis in the original]

[179] Section 93 of the *Regulations* addresses the steps that the CHRC must take once it receives the notice. That section states as follows:

> ***Deadline for notice of intention to make submissions***
>
> ***93 (1)*** *The Canadian Human Rights Commission may in Form 25 of the schedule, no later than 15 days after being provided with a notice of a human rights issue under subsection 210(1), 217(1) or 222(1) of the Act, notify the Board of whether or not it intends to make submissions regarding the issue raised in the notice.*
>
> ***Attachments***
>
> ***(2)*** *The Commission shall submit a copy of the grievance and the notice of the reference to adjudication together with its notice.*
>
> ***Copies of notice***
>
> ***(3)*** *On receipt of the notice, the Board must provide copies to the parties and the intervenors.*
>
> [Emphasis in the original]

[180] Nothing in the *Act* or the *Regulations* sets out a deadline for delivering notice to the CHRC of a human-rights issue. That notice is given because the Board may deal with an issue that affects the CHRC and its governing legislation. Given its mandate, the notice allows the CHRC to determine if it wishes to make submissions on the matter.

[181] Section 226 of the *Act* sets out the powers of an adjudicator or panel of the Board in relation to any matter referred to the adjudicator or panel for adjudication. Section 226(2)(b) addresses specific powers with respect to relief under the *Canadian Human Rights Act* (R.S.C. 1985, c. H-6; "the *CHRA*") and states as follows:

> ***Powers of adjudicator and Board***
>
> ***226 (2)*** *An adjudicator or the Board may, in relation to any matter referred to adjudication,*
>
> …
>
> ***(b)*** *give relief in accordance with paragraph 53(2)(e) or subsection 53(3) of the* Canadian Human Rights Act ….
>
> [Emphasis in the original]

[182] Section 53 of the *CHRA* sets out the powers of the Canadian Human Rights Tribunal with respect to a matter brought before it for an inquiry. Sections 53(2)(e) and (3) set out the relief that can be given in the event of a complaint being substantiated and state as follows:

> ***53 (2)*** *If at the conclusion of the inquiry the member or panel finds that the complaint is substantiated, the member or panel may, subject to section 54, make an order against the person found to be engaging or to have engaged in the discriminatory practice and include in the order any of the following terms that the member or panel considers appropriate:*
>
> …
>
> ***(e)*** *that the person compensate the victim, by an amount not exceeding twenty thousand dollars, for any pain and suffering that the victim experienced as a result of the discriminatory practice.*
>
> ***Special compensation***
>
> ***(3)*** *In addition to any order under subsection (2), the member or panel may order the person to pay such compensation not exceeding twenty thousand dollars to the victim as the member or panel may determine if the member or panel finds that the person is engaging or has engaged in the discriminatory practice wilfully or recklessly.*
>
> [Emphasis in the original]

[183] The process of filing a grievance and moving forward through the grievance procedure and eventually on to adjudication has remained largely unchanged since the establishment of the Board's predecessor, the Public Service Staff Relations Board (PSSRB) as well as that early board's successors, the Public Service Labour Relations Board (PSLRB) and the PSLREB. Indeed, the regulations that governed the process have also largely remained the same. This was summarized as follows in *Boiko v. National Research Council of Canada*, 2018 FPSLREB 11 at paras. 871 and 872:

> *[871] Under the grievance process set out under the* PSSRA [Public Service Staff Relations Act] *and the* Public Service Staff Relations Board Regulations and Rules of Procedure *("the* PSSRB Regulations*"), a grievor may force the movement of a grievance through it in a matter of days and months. This process remained largely static over the years and through the legislative changes with the* PSLRA*, the* PSLREBA*, and the* Act.
>
> *[872] Sections 71 through 77 of the* PSSRB Regulations *provided the time frames within which a grievor had to initially file a grievance and then was entitled to move it through a number of grievance levels and finally to the PSSRB for adjudication. At each level, the employer was required to provide an answer to the grievor. If the grievor was not satisfied with the response, he or she could move the grievance to the next level in the process. If the grievor was not happy with the response he or she received at the final level, then the grievor could refer the grievance to the PSSRB (now the Board).*

[184] Sections 64 through 73 of the *Regulations* set out the process and timelines for filing grievances and taking them through the grievance procedure. The process is driven largely by a grievor, albeit at times perhaps with the employer's cooperation. The grievor can move the grievance through the grievance procedure without a hearing being held or decision being made at any level, including the final level. The grievance may be referred to the Board for adjudication without a final-level hearing or decision being held or made.

[185] This grievance was filed at the first level of the grievance procedure on June 23, 2015, and was referred to adjudication on March 9, 2016. On its face, it contains no suggestion of a human-rights issue. That said, on March 16, 2016, in confirming to the parties the receipt of the reference to adjudication, the parties were told that if the matter raised an issue involving the *CHRA*, notice had to be given to the CHRC by providing the appropriate form under the *Regulations*.

[186] While there is no time limit to provide this notice, the PSAC represented the grievor throughout this process. That bargaining agent has been representing employees before this Board and its predecessors for decades. The PSAC refers hundreds of grievances to the Board annually. Certainly, it is not a mystery to the PSAC that if a human-rights issue is before the Board, it is required to deliver the notice set out in s. 210 of the *Act* in a reasonably timely manner, at least well enough before the hearing to allow the CHRC to review the matter and determine if it will make submissions.

[187] In this matter, the PSAC did not provide notice to the CHRC until more than three years after it referred the grievance to adjudication, coincidentally just four working days before the hearing began and well after this matter was originally scheduled for adjudication in October of 2016. In addition, the reference to adjudication filed in March of 2015 did not allege a breach of the relevant collective agreement, which certainly could also have been used to refer the grievance to adjudication as it contains a no-discrimination clause.

[188] I was also not provided with any evidence as to whether any mention was made or allegation raised relating to a discriminatory practice linked to the grievor's First Nations heritage during the grievance procedure or that it was in any way a basis for the termination of her employment. The PSAC representative or representatives who participated in that procedure did not testify; nor were any notes or typewritten submissions from the procedure submitted into evidence. The grievor also did not testify about the procedure. The grievance was dealt with at the second and final levels, and the responses at those levels certainly provide no hint as to what was raised or submitted, beyond the grievor's position that she should not have been terminated.

[189] At best, provided to me was that the parties discussed the issue of some discrimination relating to the grievor's First Nations heritage at some point after the grievor's termination and the grievance filing. However, there were no specifics of who discussed what, with whom, when, and in what context.

[190] The referral to the Board is the step in the process that has to be taken for the Board to have jurisdiction over the grievance. The issue that is to be decided by the Board at adjudication is what is set out in the grievance. If the grievance is against a termination of employment, then the Board must address that issue. The detailed

facts are rarely if ever set out in the grievance; they are usually drawn out in the grievance procedure.

[191] This leads to *Burchill*, the operative part being paragraph 5, which states as follows:

> *5 In our view, it was not open to the applicant, after losing at the final level of the grievance procedure the only grievance presented, either to refer a new or different grievance to adjudication or to turn the grievance so presented into a grievance complaining of disciplinary action leading to discharge within the meaning of subsection 91(1). Under that provision it is only a grievance that has been presented and dealt with under section 90 and that falls within the limits of paragraph 91(1)(a) or (b) that may be referred to adjudication. In our view the applicant having failed to set out in his grievance the complaint upon which he sought to rely before the Adjudicator, namely, that his being laid off was really a camouflaged disciplinary action, the foundation for clothing the Adjudicator with jurisdiction under subsection 91(1) was not laid. Consequently, he had no such jurisdiction.*

[192] Since that time, the Board and its predecessors have regularly heard and determined cases that arose out of terminations of employment that had as a preliminary issue an employer objection to the Board's jurisdiction under s. 211 of the *Act*, because the termination was a rejection on probation. Section 211 stated as follows at the relevant times:

> ***211*** *Nothing in section 209 is to be construed or applied as permitting the referral to adjudication of an individual grievance with respect to*
>
> ***(a)*** *any termination of employment under the* Public Service Employment Act*; or*
>
> ***(b)*** *any deployment under the* Public Service Employment Act*, other than the deployment of the employee who presented the grievance.*

[193] There is an abundance of jurisprudence in this area. It is well settled under s. 211 of the *Act* (which is similar to the legislation from the days of the PSSRB) that the Board does not have jurisdiction to deal with any termination of employment under the *PSEA*. This jurisprudence, colloquially known as "rejection on probation cases", has become established over the decades, and it always follows the same pattern. The employer ostensibly terminates a grievor by rejecting him or her on probation. Then, the grievor files a grievance against that termination and eventually refers it to the Board for adjudication. In these rejection-on-probation cases, the

grievor must establish that on a balance of probabilities, his or her termination was a sham, camouflage, or in bad faith and as such that it falls within the Board's jurisdiction (usually under s. 209(1)(b) of the *Act*, as the grievor referred her grievance to the Board for adjudication under that section, alleging that it was a disciplinary action).

[194] There is no mystery in how these cases get before the Board or in the issues to be determined. The jurisprudence is well established. The parties are aware of the character of the grievance and of what they must respectively establish to convince the Board of the merits of their positions. The grievances rarely if ever set out the particulars of the alleged sham, camouflage, or bad faith that the grievor alleged.

[195] While s. 61 of the *Regulations* allows the Board to extend the time for doing things in a grievance procedure as set out in a collective agreement or with respect to the grievance procedure before the Board, it does not set out criteria that the Board must follow except to say at s. 61(b) that it should be in the interest of fairness. That said, over the years, the Board and its predecessors have established jurisprudence with respect to extending deadlines.

[196] Neither the employer nor the respondent consented to an extension of time to refer to adjudication the grievance in an amended form. Nor was such an application made. This leaves it solely in the hands of the Board to, of its own volition, permit the change, if I am convinced that doing so would be in the interest of fairness.

[197] Short of any clear and convincing evidence that the employer was aware of it during the course of the grievance procedure or the reference to adjudication, I am not convinced that the grievor alleged or maintained that her termination was done for a discriminatory purpose relating to her First Nations heritage.

[198] Therefore, I find that based on the facts before me, the grievance as presented through the grievance procedure, while it was against the termination of employment, did not advance a claim of discrimination in a manner that would suggest a claim of relief in the form of damages under s. 226 (2)(b) of the *Act*, which incorporates damages under ss. 53(2)(e) and (3) of the *CHRA*.

B. The employer's objection to the Board's jurisdiction under s. 211 of the Act

[199] The initial question before me is one of jurisdiction. As already set out in these reasons, under s. 211 of the *Act*, the Board has no jurisdiction over a termination of employment under the *PSEA*.

[200] The jurisprudence in this area is quite settled. The Federal Court succinctly set out the generally accepted test at paragraphs 51 and 53 of *Chaudhry v. Canada (Attorney General)*, 2007 FC 389, as follows:

> *[51] In these circumstances, the employer satisfied the adjudicator that it had met the burden of proof which required it to show some evidence of an employment-related reason for a rejection on probation. In this regard see* Canada (Attorney General) v. Leonarduzzi *(2001), 205 F.T.R 238, at para. 37, where Lemieux J. wrote:*
>
> > *Specifically, the employer need not establish a prima facie case nor just cause but simply some evidence the rejection was related to employment issues and not for any other purpose.*
>
> …
>
> *[53] Once the employer's onus was met, the burden shifted to the employee to show bad faith. In this regard, the adjudicator concluded that the Applicant had not shown that the Rejection on Probation was a sham or made in bad faith.*

[201] In *Kagimbi v. Canada (Attorney General)*, 2014 FC 400, in upholding the PSLRB's decision, the Federal Court stated that the *PSEA* had been drafted in such a manner as to provide the employer with a great deal of flexibility during the probation period "… precisely so that it can evaluate the skills of a potential employee." The Court went on to state that the employer's decision to dismiss the employee was made in good faith; "… i.e. that it was based on dissatisfaction as to the employee's abilities to do the work in question."

[202] Although usually not in dispute, the first question that needs to be answered is, when did the probation period end? This is important because the basis for the termination was s. 62(1) of the *PSEA*, and the grievor filed the grievance against this employer action, which dictates the process to follow. In this case, there appears to be no issue that the grievor was terminated during her probationary period.

[203] The process involving rejection-on-probation grievances has largely been the same under the *Act*, the *PSLRA*, and the former *Public Service Staff Relations Act* (R.S.C,

1985, c. P-35), until the decision in *Tello v. Deputy Head (Correctional Service of Canada)*, 2010 PSLRB 134, which altered it somewhat.

[204] Before *Tello*, the process proceeded on the basis of the employer establishing a valid employment-related reason for rejecting an employee on probation. As set out as follows in *Leonarduzzi*, at para. 42, citing *Penner*, at 438:

> *[42] …*
>
> *In* Smith *(Board file 166-2-3017), adjudicator Norman is straightforward:*
>
> *In effect, once credible evidence is tendered by the Employer to the adjudicator pointing to some cause for rejection, valid on its face, the discharge hearing on the merits comes shuddering to a halt. The adjudicator, at that moment, loses any authority to order the grievor reinstated on the footing that just cause for discharge has not been established by the Employer….*
>
> [Emphasis in the original]

[205] Before *Tello*, once the employer established a valid cause for the rejection, the jurisprudence held that "… the burden of proof then shifts to the grievor to demonstrate that the employer's actions are in fact a sham or a camouflage, and therefore not in accordance with section 28 of the *PSEA*" (emphasis in the original, which is *Leonarduzzi*, at para. 45).

[206] *Tello* slightly altered the jurisprudential landscape, providing that in these types of hearings before the Board (or its predecessors, the PSLRB and the PSLREB), grievances filed by employees rejected on probation no longer require the employer to establish a valid employment-related reason for the rejection. It merely has to establish that the grievor was terminated within the probation period, was provided with a termination letter setting out the reason for the decision, and was paid in lieu of notice.

[207] Ms. Ryan decided to terminate the grievor for the reasons set out in the June 5 letter. The reasons satisfied the test enunciated in *Tello* and as such satisfy the initial burden of proof that the decision to terminate the grievor was based on employment-related reasons. However, this does not end the inquiry. As set out in the jurisprudence, a grievor may be able to satisfy an adjudicator or panel of the Board that the adjudicator or panel has jurisdiction if, on a balance of probabilities, the grievor can establish that the termination was not effected for a legitimate

employment-related reason but for some other contrived reason or that it was disguised discipline, a sham, a camouflage, or in bad faith. Paragraph 127 of *Tello* states as follows:

> *[127] As the grievor was unable to establish that the decision to reject him on probation was arbitrary, he bears the burden of demonstrating that the termination of employment is a "sham" or a "camouflage." As noted by the Federal Court of Appeal in another context (*Dansereau v. Canada *(1990), [1991] 1 F.C. 444 (CA), at page 462) bad faith cannot be presumed and an employee seeking to provide evidence of bad faith "… has an especially difficult task to perform…" In* McMorrow v. Treasury Board (Veterans Affairs), *PSSRB File No. 166-02-23967 (19931119), an adjudicator noted, at page 14, that, in his view:*
>
> …
>
> … if it can be demonstrated that the effective decision to reject on probation was capricious and arbitrary, without regard to the facts, and therefore not in good faith, then that decision is a nullity….
>
> … It is trite to say that a determination of whether there is good faith or not must be gleaned from all the surrounding circumstances; there can be a multitude of sets of facts that may result in a conclusion of bad faith … keeping in mind of course that good faith should always be presumed….
>
> …

[208] In *Attorney General of Canada v. Heyser*, 2017 FCA 113 at paras. 73 to 77, the Federal Court of Appeal addressed the Board's jurisdiction as follows:

> *[73] First of all, there can be no doubt, on the basis of our decisions in* Bergey *and* Féthière*, that the Board has jurisdiction, pursuant to paragraph 209(1)(*c*) of the Act and paragraph 12(1)(*e*) and subsection 12(3) of the* FAA*, to hear and determine, on their merits, decisions made by an employer revoking an employee's reliability status. In my respectful view, in the light of the legislative changes brought about since 1993, as explained by Madam Justice Gleason in* Bergey*, the view taken by the Attorney General in these proceedings is not supported by the legislation.*
>
> *[74] I would go further and say that this line of jurisprudence, which Madam Justice Gleason in* Bergey *(at paragraph 45) and Mr. Justice Boivin in* Féthière *(at paragraph 23) referred to, is no longer valid as it is based on an unreasonable interpretation of the relevant statutory provisions.*
>
> *[75] Although I am bound by the Court's clear pronouncement on that issue in* Féthière*, I wish to make it clear that I agree entirely with the opinion expressed by Mr. Justice Boivin. In other words, in*

> *dealing with terminations which result from non-disciplinary grounds, it is no longer necessary for the Board to resort to the concept of disguised discipline to assert its jurisdiction under paragraph 209(1)*(b) *since the Board has full jurisdiction under paragraph 209(1)*(c) *to deal with non-disciplinary terminations. Consequently, the view of the matter expressed by the adjudicator at paragraph 134 of the Board's reasons (and reproduced above at paragraph 17 of these reasons) is the only reasonable approach to be taken in dealing with terminations under both disciplinary and non-disciplinary matters.*
>
> *[76] Thus, in circumstances similar to those that gave rise to this litigation, it is up to the Board to determine whether the non-disciplinary termination is for cause. Consequently, the Board must, on the basis of the relevant facts surrounding the revocation and in the light of the relevant policies enacted by the Treasury Board as the employer, determine whether the termination is for cause, which means inquiring into whether the revocation is based on proper and legitimate grounds.*
>
> *[77] It is my view that if the revocation is justified on the basis of the relevant policies then the resulting termination was for cause. In other words, as is the situation here, when the employer terminates an employee on non-disciplinary grounds, i.e. because the employee has lost his or her reliability status, the Board must determine whether the revocation leading to the termination is justified. If so, the employer has shown that the termination was made for cause. If the employer is unsuccessful in demonstrating that the revocation was based on legitimate grounds, then there is no cause for the termination and the employee, as the adjudicator so ordered in this matter, must be reinstated.*

[209] I do not find that the jurisprudence that has followed either *Tello* or *Heyser* (see also *Bergey v. Canada (Attorney General)*, 2017 FCA 30 and *Canada (Attorney General) v. Féthière*, 2017 FCA 66) are mutually exclusive, and, that they may not be applied in conjunction with one another.

[210] For the reasons that follow, I find that the grievor's employment was terminated for reasons that were other than legitimate and employment related. The rejection on probation was a sham and a camouflage, and it was done in bad faith. It amounted to a termination of employment for the grievor under s. 209(1)(c)(i) of the *Act*, rather than under s. 62 of the *PSEA*.

[211] The jurisprudence dictates that good faith shall be assumed. For the reasons that follow, I find that the evidence disclosed that the respondent's and employer's representatives acted in a manner that can be described only as bad faith.

[212] In her evidence, Ms. Ryan testified that the decision to terminate the grievor was hers and that it had been based on a briefing note prepared by Ms. Revet. The evidence demonstrated that Ms. Ryan was provided with the briefing note and the draft June 5 letter sometime on Wednesday, May 20, 2015, after 9:21 a.m. (when Sgt. McAuley approved the drafts and advised Ms. Revet) and before 6:44 p.m. (when Ms. Revet confirmed to Sgt. McAuley that Ms. Ryan had signed the June 5 letter).

[213] The email correspondence between Sgt. McAuley and Ms. Revet disclosed that a briefing note and the draft June 5 letter were provided to Sgt. McAuley at 6:02 p.m. on May 19, 2015. On May 20, 2015, at 9:21 a.m., he confirmed to her that he had reviewed both documents and that he was fine with what was written in them. Their email correspondence also confirmed that Ms. Ryan had signed the June 5 letter by 6:44 p.m. on May 20, 2015.

[214] The June 5 letter stated that the reason for the rejection on probation was that the grievor had not demonstrated that she could perform DSA duties; specifically, she did not do the following:

- demonstrate an ability to follow directions and instructions;
- prioritize;
- respond effectively to policing matters;
- input data with minimal errors; and
- work cooperatively with others.

[215] The June 5 letter also stated that the grievor routinely received feedback on her performance and that training, coaching, and mentoring had been undertaken to allow her to obtain the required skills to carry out her duties. It continued to state that on May 8, she was advised verbally and in the May 8 letter that failing to comply with expectations could result in her being rejected on probation. Finally, it said that as of June 5, no improvement had been observed to indicate that she would be able to demonstrate the required skills for successful job performance.

[216] Ms. Revet did not testify; nor was the briefing note produced in evidence. There is no evidence that Ms. Revet, who works in human resources, ever met the grievor or supervised her work.

[217] Ms. Ryan testified that she did not speak with Sgt. McAuley and that she never saw the May 8 letter.

[218] There is no evidence that Ms. Ryan ever spoke with Ms. Lakeman, who testified that she did not share the Lakeman notes with anyone except Sgt. McAuley. The evidence disclosed that the Lakeman notes that he would have seen as of the June 5 letter being signed (May 20, 2015) would only have covered up to and including May 1, 2015.

[219] The evidence disclosed that Sgt. McAuley gave the grievor the May 8 letter at the end of that day. At best, the time between its delivery and the recommendation and decision to terminate her employment was five working days, Monday, May 11, through Friday, May 15, 2015. Monday, May 18, 2015, was Victoria Day and therefore a statutory holiday on which the grievor would not have worked.

[220] Ms. Revet drafted the briefing note and the June 5 letter. She sent them to Sgt. McAuley for his review before they were sent to Ms. Ryan. While there was no evidence of exactly when Ms. Revet drafted them, it is reasonable to assume that she would likely have received instructions from Sgt. McAuley during the week of May 11 to 15, 2015, and that she would have begun preparing them then and finalizing them likely on Tuesday, May 19, 2015, as that was when she forwarded them to him for his approval at the end of that day. His approval was received first thing the next morning, and the documents went to Ms. Ryan. She signed the June 5 letter at some point on Wednesday, May 20, 2015.

[221] The last entry in the McAuley notes about the grievor was dated May 8, 2015, and did not reference her performance except to refer to the May 8 letter. In his evidence, when he was asked if he saw any improvement in the grievor's performance after giving her the May 8 letter, not only did he say that he did not, but also, he said that he saw a regression in it. However, in his testimony, he provided no specifics.

[222] Also, there is absolutely no documentary evidence of the grievor's performance whatsoever after May 8, 2015, and before Ms. Ryan signed the June 5 letter on May 20, 2015. The last reference in the McAuley notes before May 8 was dated May 4, 2015. In the Lakeman notes, the month of May of 2015 had only two entries, one on May 1, the other on May 29. There was no evidence that Ms. Lakeman spoke to

Sgt. McAuley at any time between May 1 and 20, 2015 (the date Ms. Ryan signed the June 5 letter), let alone before the termination on June 5, 2015.

[223] After May 20, 2015, when Ms. Ryan received the briefing note and signed the June 5 letter, there is no evidence of any communication between Sgt. McAuley and either Mses. Ryan or Revet; nor is there any evidence of any communication between Ms. Revet and Ms. Ryan.

[224] From the evidence before me, it would appear that on Friday, May 8, at the end of the workday, Sgt. McAuley gave the grievor the May 8 letter warning her that if her performance did not improve, she would lose her job. Sometime over the next five working days, a decision was obviously made to recommend to Ms. Ryan terminating the grievor's employment because, by the sixth working day, Tuesday, May 19, Ms. Revet had already drafted a briefing note and June 5 letter for Ms. Ryan as she sent them to Sgt. McAuley for his input, and he approved them first thing on Tuesday, May 20. Sometime before the end of the day on May 20, Ms. Ryan decided to terminate the grievor's employment, and she signed the June 5 letter.

[225] At the outset of the hearing, I had made an order excluding witnesses. Sgt. McAuley testified before Ms. Ryan, and neither was present for the other's evidence.

[226] Ms. Ryan maintained that the decision to terminate the grievor's employment was hers and that it had been based on the briefing note. She also said that she post-dated the termination letter to June 5, 2015, to allow the grievor to improve her performance, ostensibly making the termination unnecessary. However, there was no evidence that this was conveyed to Sgt. McAuley. Put another way, Ms. Ryan signed the June 5 letter on the condition that the grievor's performance would not improve. Sgt. McAuley also testified that the decision to terminate was Ms. Ryan's.

[227] Any reasonable person hearing or knowing what Ms. Ryan said would understand it to mean that the grievor was to be given a chance to improve her alleged poor performance. As of the date on which Ms. Ryan signed the June 5 letter, the grievor had worked for the RCMP for less than five months. Her probationary period was one year. Roughly speaking, this left more than seven months in which the grievor could have improved her performance. This is not to suggest that she should have been given the balance of her probationary period to demonstrate an improvement;

however, one would expect that she would have been given sufficient time to demonstrate improvement. The time that the employer did provide was woefully short.

[228] If the decision was Ms. Ryan's and hers alone, and she expected that the grievor would still have an opportunity to turn things around, I would expect that she would have told Sgt. McAuley or Ms. Revet (who could have conveyed it to him). Yet, there was no evidence that that happened. Also, if that were the case, then surely, someone would have had to report to Ms. Ryan and tell her that in fact the grievor's performance had not improved but instead, as Sgt. McAuley testified, regressed. The evidence of Sgt. McAuley and Ms. Ryan is not congruent on this point.

[229] Based on the evidence, the time the grievor was given to improve her performance between the May 8 letter and Ms. Ryan determining she should be terminated from her employment was five working days. May 8 was a Friday, and May 16 to 18 was the Victoria Day long weekend; therefore, the grievor had from Monday, May 11, to Friday, May 15. In her evidence, Ms. Ryan said that on May 8, the grievor was warned that if her performance did not improve, she could be terminated from her employment by being rejected on probation. What evidence is there of her performance from May 8 to 20, 2015? None!

[230] There is absolutely no evidence of the following:

- the grievor's performance between May 8 and 20, 2015;
- anyone providing her with any form of instruction, guidance, training, or mentoring between May 8 and 20, 2015;
- either Sgt. McAuley or Ms. Lakeman providing any instruction, guidance, training, or mentoring to the grievor between May 8 and 20, 2015;
- anyone communicating any information about her performance to Ms. Ryan between May 20 and June 5, 2015; and
- Ms. Ryan having any information about the grievor's performance between May 20 and June 5, 2015.

[231] In fact, the grievor's evidence was that no one provided her with any form of instruction, guidance, training, or mentoring after she received the May 8 letter.

[232] The grievor was employed for a little less five months. In her testimony and in the June 5 letter, Ms. Ryan stated that the grievor had received appropriate training. I

do not find this true. The work description for the grievor's position listed that she had to be able to search, input, manipulate, track, analyze, extract, and delete data and information, using 14 different electronic systems. The evidence disclosed that she received training on only 1, PROS.

[233] One task for which the grievor was responsible was carrying out criminal records checks. As far as I am aware, this information is in the CPIC system. According to the evidence, training to use the CPIC system was done in two parts, consisting of an initial online course that was to be completed before the second part, an in-class session, could be taken. The grievor completed the online course; however, she did not receive the in-class training. The best evidence on this from the grievor's training record was that she attended the online course during the month of March and that she completed it by March 30, 2015. This was after three of her four months as an employee before Sgt. McAuley recommended that she be terminated. I heard no evidence of how or when she was given the time to take the online CPIC training or if she was left on her own, to do it in her spare time. The only evidence about when the in-class CPIC training was available was from the grievor, who indicated that it was not available until September.

[234] The evidence of both the grievor and Ms. Lakeman was that there was no manual, agenda, or checklist with respect to training or the tasks that the grievor was to carry out. The best evidence available also disclosed that she was never given a copy of her work description. While both Sgt. McAuley and Ms. Lakeman said that the grievor received a copy of it when she started (in late December of 2014), there is no evidence of it, and neither Sgt. McAuley or Ms. Lakeman was present when she started in the job. No document was produced that disclosed that the grievor received it, and she testified that she received it only long after she was terminated from her employment, while preparing for this hearing.

[235] The grievor was also entitled to a performance plan and an assessment. A performance plan should have been completed for her when she began working at the detachment. The evidence disclosed that nothing was done until February, when Sgt. McAuley emailed her with instructions to access a computer-based portal and take steps with respect to the plan. In the end, the evidence disclosed that no performance plan was created for her. Sgt. McAuley blamed her for it, stating that she had to take

certain steps to ensure that he was added as her supervisor. The grievor testified that she did what she was told.

[236] At the end of the day, managers are responsible for taking the necessary steps to ensure that a performance plan is put into place and that the tasks and expectations against which an employee is to be assessed are set out and made clear to the employee. Sgt. McAuley was responsible for ensuring that that was done. If problems arose, he should have rectified them. The grievor was entitled to know what was expected of her and how she was to carry out the tasks she was responsible for. This information was never provided to her.

[237] To add insult to injury, when Sgt. McAuley provided the grievor with the May 8 letter, attached to it was the Core Competences document. No evidence was provided as to its source. Where was it from? Was it a part of the grievor's job description? Was it a part of a classification document? Was it an RCMP-generated document? Was it a TB Secretariat document? Was it attached to the statement of merit criteria with the original job posting? I was provided with no information. If it was relevant to the grievor's execution of her job duties, it certainly should have been provided to her and made clear to her at the outset of her employment or at the very least, sometime shortly after she started working. Providing it to her with the May 8 letter further demonstrates to me the breadth of the bad faith exercised by the respondent and employer in their treatment of the grievor.

[238] The employer submitted that the grievor received mentoring; however, I also find this not true and, quite frankly, disingenuous. While Sgt. McAuley said that he assigned Ms. Lakeman to be the grievor's mentor, and perhaps it was hoped that that would develop, it is clear that it did not happen.

[239] A mentor is defined in the Canadian Oxford Dictionary, Second Edition, as "an experienced and trusted advisor and guide." It is clear from the evidence that the grievor and Ms. Lakeman did not get along. From the grievor's perspective, she felt that Ms. Lakeman picked on her, which she raised with Sgt. McAuley. This was noted in the McAuley notes at the March 4, 2015, entry. The evidence disclosed that Sgt. McAuley did nothing. After nothing was done, the evidence was that sometime in April of 2015, the grievor turned to the RCMP's Edmonton office responsible for aboriginal policing.

[240] The evidence disclosed that when the grievor started, she was given a bunch of policies to review and that later on, she was taught tasks by whomever was available. While Ms. Lakeman initially stated that she trained the grievor, later, she stated that Mses. Rah and Jackson did most of it. This was consistent with the grievor's statements. Also, Ms. Lakeman said that she worked with the grievor daily. However, this is not accurate, because Ms. Lakeman was responsible for court liaison duties, which required her to be out of the office on Mondays. She also worked a compressed schedule, which had her out of the office every second Friday.

[241] Ms. Lakeman also admitted that once Ms. A arrived in January of 2015 and was to carry out court-liaison duties, Ms. Lakeman spent her time training Ms. A. When she gave her evidence on this point, Ms. Lakeman stated, "Victoria [the grievor] was mostly with Julie and Sherry [Mses. Rah and Jackson]." This is in line with the grievor's statement in her evidence, which was that she received more instruction from them than from Ms. Lakeman. Mses. Rah and Jackson were either part-time or casual DSA employees. They did not testify; nor do I have any idea of what if any qualifications they had to teach or train the grievor. The evidence also disclosed that they were not always at work when the grievor was there.

[242] The Lakeman notes also start only as of February 9, 2015, which was the beginning of the grievor's seventh week of work. The first notation that had anything to do with the grievor's performance was not made until February 16, 2015.

[243] It is difficult to fathom that someone can be expected to carry out work without being trained. One can hardly fault the grievor for not being able to perform tasks when she was not given the required tools and was not trained and given that training was not available.

[244] In their evidence, both Sgt. McAuley and Ms. Lakeman raised issues about the grievor's behaviour, suggesting that she was belligerent or aggressive in how she conducted herself with them. The grievor was before me for four days. In addition to her evidence before me, I saw her interacting in the hearing room as well her demeanour during the course of the evidence of the other witnesses. She certainly did not exhibit any sort of behaviour that could be described as belligerent, aggressive, impolite, impatient, or disrespectful. She appeared subdued, polite, and respectful to everyone at the hearing, in the face of the fact that during the course of it, the subject

matter of the evidence was an attack on her abilities and performance and was highly critical of her character.

[245] I find it out of the ordinary that Sgt. McAuley would have made a note about the fact that the grievor was belligerent in a telephone call some four months before she started working for the employer and before she was hired. How could that have been relevant to the grievor's performance? And why would he note something about someone who was not even an employee at the time?

[246] It is clear to me that the employer and respondent acted in bad faith in their decision to terminate the grievor's employment. The evidence has satisfied me that the termination was a contrived reliance on s. 62 of the *PSEA*. As such, I have jurisdiction under the *Act* to hear the grievance. The grievance is allowed.

[247] The grievor seeks reinstatement into her DSA position in Mayerthorpe and Alexis, and compensation for all her losses. The employer made no submissions on remedy. Under s. 228(2) of the *Act*, I must make the order that I consider appropriate in the circumstances.

[248] I have determined that reinstatement is appropriate. The grievor is to be reinstated to her DSA position in Mayerthorpe and Alexis. She is also entitled to compensation for lost salary and benefits, together with interest on her lost salary.

[249] For all of the above reasons, the Board makes the following order:

(The Order appears on the next page)

IV. Order

[250] I have jurisdiction to hear this matter.

[251] The grievance is allowed.

[252] The grievor is to be reinstated to her DSA position in Mayerthorpe and Alexis.

[253] The employer shall compensate the grievor for her salary and benefits at the CR-04 group and level, less statutory deductions, and deductions for union dues, retroactive to June 5, 2015.

[254] The employer shall pay the grievor interest on the net amount after the deductions mentioned earlier in this decision and at the appropriate rate of interest in accordance with the laws of the province of Alberta as provided for in s. 36(1) of the *Federal Courts Act* (R.S.C., 1985, c. F-7), to be calculated and compounded annually from June 5, 2015, until payment is made.

[255] Within 60 days of this decision, the employer shall reinstate the grievor and provide her with compensation on the terms set out at paragraphs 253 and 254 above.

[256] I shall remain seized for 90 days of this decision with respect to all questions related to remedy.

February 10, 2020.

John G. Jaworski,
a panel of the Federal Public Sector
Labour Relations and Employment Board