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



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

BETWEEN

SHIRLEY DUSSAH

Grievor

and

**DEPUTY HEAD
(Office of the Chief Human Resources Officer)**

Respondent

Indexed as
Dussah v. Deputy Head (Office of the Chief Human Resources Officer)

In the matter of an individual grievance referred to adjudication

Before: Steven B. Katkin, a panel of the Federal Public Sector Labour Relations and
Employment Board

For the Grievor: Bertrand Myre, Canadian Association of Professional Employees

For the Respondent: Kétia Calix, counsel

Heard at Ottawa, Ontario,
March 3 to 6 and July 27 to 30, 2015, and March 8 to 10, 2016.
(FPSLREB Translation)

REASONS FOR DECISIONFPSLREB TRANSLATION

I. Individual grievance referred to adjudication

[1] This decision deals with the decision by the Assistant Deputy Minister, Governance, Planning, and Policy Sector, Office of the Chief Human Resources Officer, Treasury Board (“the employer”), to terminate Shirley Dussah (“the grievor”) for unsatisfactory performance.

[2] Beginning in December 2011, the grievor held the position of manager, Public Service Employee Survey, Governance, Planning, and Policy Sector, Office of the Chief Human Resources Officer, Treasury Board. The position was classified at the EC-07 group and level. In a letter dated December 16, 2013 (Exhibit E-1, Tab 30), the employer terminated her for unsatisfactory performance, effective January 6, 2014.

[3] The termination letter, dated December 16, 2013 (Exhibit E-1, Tab 30), reads as follows:

[Translation]

...

From your arrival in the Governance, Planning, and Policy Sector in December 2011, shortcomings have been noted in your performance as a senior advisor at the EC-07 level.

For your semi-annual performance review, management spoke with you on November 6, 2012, about your 2012-2013 performance agreement. During that discussion, your manager shared concerns with you about your ability to meet the requirements of your position. That same day, your manager implemented an official action plan to help you improve your performance. The process included defining performance expectations in a bimonthly work plan. In addition, management held meetings every two weeks to determine whether the work had been done in conformity with the work plan. Finally, those meetings were summarized in written reports, which were given to you, and you had the opportunity to provide comments and feedback and to discuss your training needs with your supervisor.

Your manager met with you on April 19, 2013, about your 2012-2013 performance review. During the discussion, you were informed that you had obtained “Level 2 (Succeeded -)” for the 2012-2013 fiscal year.

On May 14, 2013, management met with you and offered you an AS-06 assignment as part of your action plan for unsatisfactory performance under the supervision of Marc Tremblay, Executive Director of Official Languages. You were informed that you would

be entitled to salary protection for the assignment period. After reflecting on it, you refused the offer.

On June 6, 2013, as part of your action plan for unsatisfactory performance, you received a letter informing you that you would be assigned to EC-07-level duties without team supervision under Debra Tattrie, in the Performance Management Division, from June 10 to December 10, 2013. The assignment letter also advised you that if your performance became fully satisfactory, you would be placed in an EC-07 position with personnel management duties and that your performance management would continue, to help you address the remaining shortcomings. It also advised you that in the event of a failure, we would have to proceed to terminating you for unsatisfactory performance.

In June 2013, Debra Tattrie informed you of the requirements of the EC-07 position without team supervision by setting out in an action plan the performance objectives to achieve. You had bilateral meetings with her to discuss your performance, and you received feedback every month advising you that your performance was still not satisfactory as the same shortcomings continued, including judgment and understanding, the ability to understand work-related items, and communication.

Thus, as of November 2012, your manager officially informed you of the requirements of your position; you received weekly feedback and had opportunities to negotiate goals and discuss your performance with your supervisor. You have also had the opportunity to take several types of training, receive guidance and coaching, and improve your performance during an assignment.

*Despite everything made available to you to help you overcome your difficulties, your performance remained unsatisfactory. As a result, in accordance with the authority delegated to me by the deputy head under ss. 12(1)(d) and 121(3) [sic] of the Financial Administration Act, your will be terminated for unsatisfactory performance ****on January 6, 2014. Please note that this date is firm and final**.***

...

[Emphasis in the original]

[4] Since then, ss. 12(1)(d) and (3) of the *Financial Administration Act* (R.S.C., 1985, c. F-11; *FAA*) have continually read as follows:

12(1) ... every deputy head in the core public administration may, with respect to the portion for which he or she is deputy head,

...

(d) provide for the termination of employment, or the demotion to a position at a lower maximum rate of pay, of persons employed in the public service whose performance, in the opinion of the deputy head, is unsatisfactory

...

(3) Disciplinary action against, or the termination of employment or the demotion of, any person under paragraph (1) ... (d) ... may only be for cause.

[5] On December 24, 2013, the grievor filed a grievance challenging her termination. In it, she alleged that it had been unreasonable for the employer to consider her performance unsatisfactory, given problems in the procedure used to evaluate her performance and the employer's bad faith. She asked that her termination be overturned, that any reference to her termination in her employee file be removed, that she be reinstated into a position classified at the EC-07 group and level with the employer, that she be reimbursed for lost compensation and benefits, and that she receive any measure that would make her whole.

[6] After being rejected at the final level of the grievance process, the grievor's grievance was referred to adjudication on March 24, 2014, under s. 209(1)(c)(i) of the *Public Service Labour Relations Act* (S.C. 2003, c. 22, s. 2). Among other things, this provision involves the demotion or termination of an employee of the core public administration under s. 12(1)(d) of the *FAA* for unsatisfactory performance.

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

[8] On June 19, 2017, the *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* and the *Public Service Labour Relations Act* to, respectively, the Federal Public Sector Labour Relations and Employment Board ("the Board"), the

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

Federal Public Sector Labour Relations and Employment Board Act, and the Federal Public Sector Labour Relations Act (FPSLRA).

II. Summary of the evidence

[9] The employer called the following nine witnesses, all of whom worked in the Governance, Planning, and Policy Sector, Office of the Chief Human Resources Officer, Treasury Board: Suzanne Lehouillier, Director, Performance Measurement and Monitoring, and the grievor's immediate supervisor; Deborah Kovacs, Acting Director, Performance Measurement and Monitoring; Debra Tattrie, Senior Director, Performance Management Division; Martin Béliveau, Director, Performance Measurement and Monitoring; Christine Nassrallah, Executive Director, Strategic Infrastructure, Information Management and Research; Vickie Coghlan, Analyst, Performance Measurement and Monitoring; Kathy Malizia, Team Leader, Data Quality Assurance and People Information Management Team; Ross MacLeod, Assistant Deputy Minister; and Andrea Chatterton, Analyst/Advisor. The grievor testified on her own behalf.

A. For the employer

1. Ms. Lehouillier

[10] In 2011, the grievor lost her job with Public Services and Procurement Canada, when the department's Consulting Services unit was abolished. Ms. Lehouillier then received the grievor's résumé and met with her in an informal interview.

Ms. Lehouillier had a discussion with the grievor's manager and, after making some verifications, concluded that the grievor's references were quite good.

[11] As indicated in the offer letter signed by Ms. Lehouillier and the grievor (Exhibit S-25), the grievor began working with the employer on December 12, 2011. She worked in the group responsible for managing the Public Service Employee Survey. Her responsibilities included managing a team of analysts, the anticipated results of which included preparing presentations for about 90 departments and agencies, preparing briefing notes, and analyzing survey results.

[12] The team that the grievor was to manage consisted of eight employees, including two EC-06s, two EC-05s, two EC-04s, one EC-02, and one administrative assistant. Ms. Lehouillier emphasized that before accepting the position, the grievor had been informed that the team had difficulties; in particular, one employee had performance problems.

[13] According to Ms. Lehouillier, the grievor's performance was unsatisfactory for several reasons. Among other things, the grievor did not show that she had the competencies required to manage a team. She also showed shortcomings in her understanding of the work and her daily judgment.

[14] In the three months after she was hired, Ms. Lehouillier authorized the grievor to take mentoring sessions at the School of Public Service. In addition, in her first months in the position, the grievor contacted the Labour Relations unit about managing a difficult team and was given a presentation on the topic.

[15] The grievor's first performance management and learning report for the period from December 12, 2011, to March 31, 2012 (Exhibit S-1), had no performance rating because, according to Ms. Lehouillier, it was a learning period; consequently, an assessment would have been premature. That first report mentioned positive things and the fact that the grievor had replaced Ms. Lehouillier for a week. It also indicated that the grievor had difficulty meeting deadlines and that she needed to better manage the time she spent counselling employees on her team.

[16] Ms. Lehouillier suggested that the grievor attend the National Managers' Community Professional Development Forum in Winnipeg in May 2012 as it was a great learning and networking opportunity. The grievor was the employer's only employee to attend the Forum in 2012. In November 2012, she took part in the Treasury Board Secretariat's three-day leadership development program, followed by a 360-degree assessment and 10 to 12 hours of coaching.

[17] On October 1, 2012, Ms. Malizia met with Ms. Lehouillier to complain about an email that the grievor had sent that day to two managers (Exhibit E-1, Tab 18) alleging that Ms. Malizia had monopolized the grievor's time the week before, for a total of 2.5 person-days. Ms. Malizia told Ms. Lehouillier that she had to take the time to explain and re-explain some concepts to the grievor. Ms. Lehouillier took notes at that meeting about the email, which Ms. Malizia had sent to her.

[18] On October 18, 2012, Ms. Lehouillier informed the grievor that she should ask herself if she was the right person for the position she held because in the grievor's words, she was "[translation] chasing a train". Ms. Lehouillier noted that the pace of the position was too fast for the grievor and that it caused her stress. She noted her observations in writing in emails to herself on October 21, 22, and 27, 2012, some of

which were about a 360-degree assessment (Exhibit E-1, Tab 1). Her observations also noted that the grievor was transparent, honest, sincere, and collaborative and that she made every effort to accomplish her tasks. However, according to Ms. Lehouillier, the grievor often delegated the work without understanding it, and employees sensed that. Managing a difficult team affected the grievor's health.

[19] Ms. Lehouillier stated that on October 22, 2012, the grievor emailed one of her employees about a document that he had prepared. In the email, which she sent to all her team members and to Ms. Lehouillier, the grievor criticized the employee's performance and told him that he was not up to the level expected of his position (Exhibit E-1, Tab 19). The same day, Ms. Lehouillier told the grievor by email that she should not have sent the email to the team and that it had humiliated the employee in question. The employee discussed it with Ms. Lehouillier and notified the grievor that he was considering filing a harassment complaint or informing senior management. In an email dated October 23, 2012, the grievor apologized to the employee, the team, and Ms. Lehouillier.

[20] According to Ms. Lehouillier's testimony, the grievor twice made comments to two managers; one was about premenstrual syndrome. When Ms. Lehouillier told her that the comments were inappropriate, the grievor replied, "[translation] We all have our tics."

[21] On Friday, November 2, 2012, Ms. Lehouillier had a two-hour meeting with the grievor to discuss her mid-year performance management and learning report for April 1 to September 30, 2012 (Exhibit E-2). Due to shortcomings in meeting deadlines and in interactions with her subordinates and colleagues, Ms. Lehouillier assigned her a "Level 2 (Succeeded -)" performance rating, which is defined as follows:

[Translation]

*This performance level indicates that the results obtained **did not fully meet performance expectations**. The employee did not produce the required results to show that he or she has some of the most important competencies for this position.*

[Emphasis in the original]

[22] Ms. Lehouillier said that the meeting had been difficult and that the grievor had not signed the performance management and learning report as she did not agree with the rating. The grievor complained about some of her employees, particularly one who

had behavioural problems. As indicated in her discussion notes (Exhibit E-1, Tab 2), Ms. Lehouillier agreed that the grievor's team was difficult and felt that it affected the grievor's health.

[23] At the November 2, 2012, meeting, Ms. Lehouillier informed the grievor that as they had already discussed, the grievor would begin to be subjected to a performance management plan, including a work plan with seven objectives set by Ms. Lehouillier. She confirmed as much on the same day by email (Exhibit E-1, Tab 3), as follows:

[Translation]

...

Following your performance evaluation dated November 2, 2012, I must begin to manage your performance.

As discussed today:

1. We will meet every two weeks to follow up on/review the seven objectives set out in your work plan to help you improve your management skills and competencies. The seven objectives are:

- a) Improve judgment and understanding ...*
- b) Become flexible and faster in her ability to understand work-related items ...*
- c) Perform management tasks herself ...*
- d) Improve her management style and approach (focus on communication) ...*
- e) Deliver work items within the agreed times ...*
- f) Keep personnel-related information confidential at all times ...*
- g) Provide support and guidance to employees ...*
- h) I have attached an electronic copy of your work plan as requested.*

...

2. Every two weeks, the results of our discussions will be written in your work plan.

3. Our next meeting will be on November 15.

4. I should be notified of any team or other problems that may come up in the future. If necessary, I will involve Labour Relations.

Our objective is your professional success, and we will provide you with the support you need to improve in your duties. However, you must know that if your performance does not improve, we will have no other choice but to proceed with a demotion or termination.

...

[24] Ms. Lehouillier sent the work plan to the grievor electronically on Friday, November 2, 2012, at 5:48 p.m. The email indicated that if the grievor's performance did not improve, the employer could demote or terminate her.

[25] Ms. Lehouillier's observations were the only performance indicator for items "a", "b", and "g" of the grievor's performance management plan (Exhibit E-1, Tab 3). The only performance indicator for item "c" was the number of tasks that the grievor had carried out personally. The performance indicators for item "d" were 1) a reduction in the number of incidents and errors, and 2) the scarcity of such incidents and errors. The only performance indicator for item "e" was delivering work items on time. Finally, the only performance indicator for item "f" was a complete absence of confidentiality breaches.

[26] The grievor replied to Ms. Lehouillier in an email dated November 6, 2012 (Exhibit E-1, Tab 3). She noted that in her opinion, the work plan's objectives were too vague, and that later, she would comment more fully.

[27] In an email to herself dated November 13, 2012 (Exhibit E-1, Tab 4), Ms. Lehouillier noted that for the week of November 5 to 9, 2012, the grievor had been more productive and that it was the first time she had accomplished so many tasks in one week.

[28] The grievor sent a detailed email to Ms. Lehouillier on November 22, 2012, with the work plan and her comments (Exhibit E-1, Tab 6). Among other things, the grievor noted that her performance management and learning report indicated that she had achieved 9 of the 10 set objectives and that some of the work plan's objectives lacked precision.

[29] Ms. Lehouillier wrote notes on the grievor's document and discussed her November 22, 2012, email with her. The grievor insisted that these were threats rather than accepting the work plan as a tool for improving her performance. As she requested, Ms. Lehouillier examined each item in the plan and told her what she needed to do. The grievor set the deadlines for delivering the work herself. However, Ms. Lehouillier asked the grievor to let her know if she changed the deadlines.

[30] In her October 31, 2012 (Exhibit E-1, Tab 20), notes, Ms. Lehouillier referred to an incident that occurred that day involving the grievor and one of her EC-06 employees, Aloysia Pinto. Ms. Pinto was responsible for a file on structural equation modelling and had planned a meeting with Statistics Canada. The grievor changed the meeting location and invited another person without notifying Ms. Pinto. Ms. Lehouillier stated that as a manager, the grievor should have felt it was appropriate to consult Ms. Pinto about the file.

[31] Ms. Lehouillier addressed the November 15, 2012 (Exhibit E-1, Tab 5), work plan. Objective 1 was about improving judgment and understanding. On that point, Ms. Lehouillier noted that on November 13, 2012, the grievor asked her if she had approved an employee sending colleagues a survey on employee engagement from an external firm. Ms. Lehouillier explained to the grievor that it was a study, not a survey, and that the employee did not need approval to share a study with colleagues that might interest them. Ms. Lehouillier noted that the grievor did not seem to understand.

[32] Ms. Lehouillier also made positive comments. Objective 6 was on maintaining the confidentiality of personnel-related information. On that point, Ms. Lehouillier noted an improvement as the grievor closed her office door when she met with her employees. As for objective 7, which was about providing support and orientation for employees, Ms. Lehouillier noted that the grievor had offered more support to an employee and that her behaviour had changed some.

[33] Ms. Lehouillier stated that after preparing the work plan, she met with the grievor every two weeks, and that she gave the grievor a paper copy of the plan.

[34] The next work plan was for November 15 to December 7, 2012 (Exhibit E-1, Tab 8). During that period, Ms. Lehouillier was away from November 23 to December 2, 2012. The grievor was absent on the afternoon of December 6 and on December 7. During Ms. Lehouillier's absence, some comments were made by her replacement, Benoît Cadieux, Manager, Management Accountability Framework, Governance, Planning, and Policy Sector, Office of the Chief Human Resources Officer, Treasury Board.

[35] As indicated in objective 1 of the work plan (improve judgment and understanding), Mr. Cadieux told Ms. Lehouillier that the grievor had met with him about an email on structural equation modelling that Ms. Pinto had sent directly to Ms.

Lehouillier and the grievor. The grievor felt that it was inappropriate to send it directly to Ms. Lehouillier and told Mr. Cadieux that she wanted to email Ms. Pinto about it. Mr. Cadieux advised her that it was not worth making a big deal out of it and suggested that she discuss it directly with Ms. Pinto rather than emailing her.

[36] Ms. Lehouillier stated that the grievor did not agree with her comments and did not use them to improve. Among other comments, Ms. Lehouillier mentioned in objective 3 — perform management tasks herself — that the grievor had prepared a strategic update for the Human Resources Council, made up of directors general from several departments, but that the document was too detailed for that group. As the deadline for the document was December 6, 2012, and the grievor was absent, Ms. Lehouillier had to rewrite it (Exhibit E-1, Tab 9). She noted that the grievor continued to close her office door when she met with her employees.

[37] Ms. Lehouillier presented an email dated December 10, 2012, as an example of her written instructions to the grievor (Exhibit E-1, Tab 10), which reads as follows:

...

[Translation]

Hi,

[Translation]

Here are a few items that must be delivered.

- 1. Briefing note on the 2014 PSES required by Friday, Dec. 14. As mentioned to you last week, it should highlight the value-added of doing a PSES, our proposed high-level timeframe, estimated funding, etc. Refer to the orgs' action plans... How is PSES useful to organizations?*
- 2. The proposed high-level timelines should also be in one separate document. What are the milestones? (This is besides the briefing note on value-added, etc.). Christine wants it in a separate document.*
- 3. Note: Let's avoid duplication. We should not be asking the same questions as the PSC's survey of staffing.*
- 4. Christine would like to present our survey proposed themes to the Senior Management Committee. Prior to this, we should consult with our HRC advisory working group and our policy centers [sic]. The HRC advisory working group should be revived and consulted about what proposed concepts/themes they believe should be explored in the next PSES.*

5. Need to have a 2014 PSES engagement plan. Christine would like to see it in the next few weeks (relatively soon).

Thanks,

...

[38] The grievor was on sick leave from December 12, 2012, to January 12, 2013. Ms. Lehouillier met with her on January 16, 2013, from 10:30 a.m. to 12:55 p.m. During that meeting, she gave the grievor a copy of her work plans for December 7, 2012, and January 16, 2013 (Exhibit E-1, Tab 11), and gave her feedback. In an email dated January 17, 2013, which she sent to herself and Estelle Guilhem, Senior Labour Relations Advisor, Human Resources Branch, Treasury Board, Ms. Lehouillier prepared a summary of the discussions from that meeting (Exhibit E-1, Tab 11).

[39] At the January 16, 2013, meeting, Ms. Lehouillier informed the grievor that she had moved one of the employees on her team, who was a difficult employee, under Ms. Chatterton's responsibility, to allow Ms. Chatterton to develop management skills. The grievor did not object. She also told the grievor that she was satisfied with the confidentiality objective as the grievor had started closing her door when speaking with her employees.

[40] Ms. Lehouillier told the grievor that her EC-06 analysts were quick to understand and that she often fell behind in her understanding. The grievor replied that she was not a statistician or specialist. Ms. Lehouillier replied that neither was she and that she had hired the grievor as a manager, not a specialist.

[41] Ms. Lehouillier told the grievor that the work plans were in place to improve her core management skills and because Ms. Lehouillier wanted her to take on the Public Service Employee Survey project. She felt that it was a tool to facilitate her termination, but Ms. Lehouillier reassured her and told her that that was not the goal. She then asked Ms. Lehouillier if she should look for another job. Ms. Lehouillier replied that if she thought another job would be better for her, she was free to seek one. Ms. Lehouillier then reiterated that her goal was to help her, which was why Ms. Lehouillier provided her with examples and met with her every two weeks.

[42] Ms. Lehouillier informed the grievor that a manager had provided negative feedback about her with respect to a project called "[translation] dashboard" and about statements she made at a directors' meeting. She told Ms. Lehouillier that she thought

that Ms. Lehouillier did not trust her, which Ms. Lehouillier denied. The grievor said that she had lost confidence in Ms. Lehouillier when she read the November 2, 2012, letter that indicated that if she did not improve, she could be demoted or terminated. The grievor told Ms. Lehouillier that she felt confined because she knew that Ms. Lehouillier was documenting her performance and that people at the Treasury Board had criticized her. Ms. Lehouillier said that people had contacted her because they were frustrated with the grievor's lack of understanding and judgment.

[43] The next work plan was dated January 30, 2013 (Exhibit E-1, Tab 12). With respect to objective 1 (improve judgment and understanding), Ms. Lehouillier said that the development of the presentation on the 2014 Public Service Employee Survey had been frustrating for one of the EC-06s reporting to the grievor. On January 23, 2013, Ms. Chatterton had to sit with the grievor for 1.5 hours to tell her what to write and how to order and format the slides. On January 30, 2013, an email from the grievor to Ms. Chatterton made no sense to Ms. Chatterton and Ms. Lehouillier; the grievor asked for definitions of the concepts and of the word "themes".

[44] Ms. Lehouillier met with the grievor on January 31, 2013, from 9:00 to 10:00 a.m., to discuss the work plan (Exhibit E-1, Tab 12). She summarized the discussion in an email to Ms. Guilhem the same day (Exhibit E-1, Tab 12). During the discussion, Ms. Lehouillier mentioned that the grievor could avail herself of a mentor. The grievor replied that she had coaching sessions remaining from the Treasury Board Secretariat's leadership development program and that because she was busy, having a mentor would take too much of her time. Ms. Lehouillier said it was another "tool" to help her.

[45] In her email, Ms. Lehouillier mentioned that these discussions were difficult for her because the grievor did not seem to understand her lack of judgment and understanding in her daily interactions. She wrote that the grievor probably believed that Ms. Lehouillier wanted to hinder her, but that it was not so. Ms. Lehouillier wanted to provide her with timely feedback and to help her become a good manager.

[46] From 10:00 a.m. to 12:00 p.m. the same day, Ms. Lehouillier, the grievor, and her team had a meeting with a policy centre. Ms. Coghlan and Ms. Chatterton then went to Ms. Lehouillier's office to express their doubts about the grievor's ability to manage the 2014 Public Service Employee Survey as she needed far too much time to understand the subject matter. In her email, Ms. Lehouillier wrote that she agreed with them.

[47] The February 18, 2013 (Exhibit E-1, Tab 13), work plan was for the first two weeks of the month. Ms. Lehouillier met with the grievor on February 18, 2013. She gave her a copy of the work plan in which she had completed the “[translation] results achieved” column. Ms. Lehouillier told her that she had not achieved the first two objectives, as her answers written in a document on public opinion research did not answer the questions that had been asked. Ms. Lehouillier reviewed the grievor’s first draft with her and told her that even though she had not completed all the questions, Ms. Lehouillier expected the answers to be appropriate, without being perfect. Ms. Lehouillier said that the grievor acknowledged that her answers were not correct. After seeing the second draft, Ms. Lehouillier had to redo the answers. According to her, because the grievor had been in the group since December 2011, or 15 months, she should have known how to answer the questions. That is also what she wrote in an email to Ms. Guilhem on February 7, 2013 (Exhibit E-1, Tab 13). At the February 18, 2013, meeting, the grievor said that she needed more time to focus. Ms. Lehouillier offered her the option of working from home and asked what she could do to help her with similar work in the future. Ms. Lehouillier informed Ms. Guilhem of that meeting in an email on February 18, 2013 (Exhibit E-1, Tab 13).

[48] The next work plan covered February 19 to March 8, 2013 (Exhibit E-1, Tab 14). As general observations, Ms. Lehouillier noted, “[translation] Shirley is working very hard to meet the requirements of her position. She always tries to do what is required. Unfortunately, her lack of judgment and understanding is often apparent in her daily interactions.” In objective 2, on becoming flexible and faster in her ability to understand work-related items, Ms. Lehouillier mentioned a letter of understanding with Statistics Canada that the grievor had been supposed to prepare over a month earlier and for which no draft had been submitted. Ms. Lehouillier reminded her of the urgency of sending a draft to Statistics Canada. She also told her that just a few changes were needed from the last letter of understanding.

[49] The meeting with the grievor on March 8, 2013, took 1 hour and 40 minutes. The same day, Ms. Lehouillier summarized the discussion in an email to Ms. Guilhem (Exhibit E-1, Tab 14). Among the topics discussed, according to Ms. Lehouillier’s testimony, the grievor mentioned that she believed that people were criticizing and talking about her. Ms. Lehouillier told her that her employees had expectations of her, as her director general had of her and Ms. Lehouillier had of her project managers.

[50] The grievor told her that in her previous jobs, the projects she managed gave her time to think, such as when planning international conferences or revising documents. Ms. Lehouillier tried to make the grievor see that the survey field, which was an operational job, might differ too much from her previous employment areas, which would explain some of her difficulties. The grievor asked Ms. Lehouillier if she was saying that the grievor should look for another job; Ms. Lehouillier replied that she would never say that to the grievor. However, she told the grievor that she had to think about herself and that if she needed time to think while performing her duties, an operational job might not suit her. Ms. Lehouillier asked her to think about it.

[51] They discussed in detail the position of being the manager of the Public Service Employee Survey, among other things the fact that the grievor's employees asked her more detailed questions than she was used to. As a manager, she did not have to be a surveys expert, but her employees expected her to ask the right questions and to understand quickly enough.

[52] Ms. Lehouillier told the grievor that she received job ads every day on Career Watch. She showed the grievor what she received on her computer and sent the grievor the link so that she could register.

[53] The grievor asked Ms. Lehouillier if she trusted her. Ms. Lehouillier replied that it was not a matter of a lack of trust but that she was trying to help the grievor through the work plan. The grievor asked her how long she would need to follow the plan. Ms. Lehouillier replied that according to Labour Relations, employee performance could be managed formally for about a year, depending on the position. When the grievor asked her if it was a formal plan, Ms. Lehouillier replied that it was.

[54] According to Ms. Lehouillier, the grievor never agreed to take control as a way to improve. She mentioned a meeting with the grievor on April 4, 2013, which she summarized in an email to Ms. Guilhem the same day (Exhibit E-1, Tab 16). At that meeting, the grievor told her that the work plan was causing her significant stress and that she did not feel confident at work. She said that the workplace lacked respect. She defined "respect" as referring not only to a person's culture or education but also to how the person feels about others. She said that the lines of communication were blurred because her employees consulted Ms. Lehouillier about the work. According to the grievor, Ms. Lehouillier believed everything the employees told her and then

included their comments in the grievor's work plan. The grievor said that she needed time to adjust to a new workplace. When Ms. Lehouillier told her that she had been in her position for a year-and-a-half, she replied that that was not sufficient for adjustment.

[55] On April 10, 2013, the grievor sent Ms. Lehouillier an email comprising several pages and six attachments (Exhibit E-1, Tab 15). It included her comments on how Ms. Lehouillier managed her performance. Essentially, according to the wording of the grievor's comments, the process was flawed. Among other things, she wrote that the work plan was vague and that it was based on value judgments rather than concrete performance criteria and measurable objectives.

[56] The six attachments included the grievor's comments on the work plans for the following dates: November 15, 2012, December 7, 2012, January 16, 2013, January 30, 2013, February 18, 2013, and March 8, 2013. In her April 15, 2013, email, Ms. Lehouillier also responded to each of the grievor's comments (Exhibit E-1, Tab 15). She wrote the following:

[Translation]

...

I added my comments to all the points raised in this email and in the 6 attachments. I find it unfortunate that you choose to look for explanations for things raised 5 months ago... Why did you not choose to discuss them earlier, if you had questions? That would have helped you better understand how to improve... I must confess to you that over the last few months, I found these performance discussions very difficult because, each time, you tried to defend yourself without trying to understand the "why"....

I hope this answers your questions....

...

[57] Ms. Lehouillier prepared the grievor's performance management and learning report for April 1, 2012, to March 31, 2013 (Exhibit E-1, Tab 16), and assigned her an overall rating of "Level 1 (Did not meet)", which is defined as follows:

[Translation]

*This performance level indicates that the results obtained **did not meet performance expectations**. The employee consistently had difficulty demonstrating the most important competencies for this position.*

Managers are responsible for ensuring that employees who receive a 1 rating prepare an action plan on the performance problems.

[Emphasis in the original]

[58] The grievor received the report on April 16, 2013. The same day, Ms. Lehouillier summarized the meeting in an email to Ms. Guilhem. According to the report, the grievor had achieved only one objective, which was confidentiality. Ms. Lehouillier testified that the grievor's assessment was consistent with the definition for the rating that corresponded to her performance. In the narrative assessment, among other things, Ms. Lehouillier noted that employees on the grievor's team came to see her directly when they felt that she showed a lack of judgment or understanding or when she spent too much time on certain files. Ms. Lehouillier did not arrange those meetings, and according to her, the employees were afraid that they would cause problems for them with the grievor.

[59] In the narrative evaluation, Ms. Lehouillier also noted that she had assumed responsibility for activities related to the Organisation for Economic Co-operation and Development (OECD) so that the grievor could focus on her role of managing the Public Service Employee Survey.

[60] The grievor disagreed with the rating and did not sign the performance management and learning report. She made comments to Ms. Lehouillier, some of which Ms. Lehouillier accepted after a discussion. So, Ms. Lehouillier revised the grievor's overall rating to "Succeeded -" (Exhibit S-8). The grievor still did not agree and did not sign the report.

[61] Ms. Lehouillier referred me to an email from Ms. Coghlan to her dated January 23, 2013 (Exhibit E-1, Tab 22). An email from the grievor dated September 7, 2012, and another to Ms. Coghlan of November 29, 2012, were attached to that email. In her email to Ms. Lehouillier, Ms. Coghlan said that she had cleaned up her emails and that the attached emails had reminded her that she had had to provide the grievor with the same information four times in three months and that each time, the grievor had asked her if their team had that information. Ms. Lehouillier forwarded those emails to Ms. Guilhem, indicating, "[translation] [to] put in Shirley Dussah's file".

[62] In cross-examination, Ms. Lehouillier stated that she had been pleased on hiring the grievor because on paper and with her references, she met the position's requirements.

[63] As for the fact that the grievor had replaced her on an acting basis from July 3 to 20, 2012, Ms. Lehouillier said that she had taken vacation and that the grievor was a manager who reported to her.

[64] Ms. Lehouillier was questioned about the situation involving the employee whose performance the grievor criticized in the email sent to her team and to Ms. Lehouillier. Specifically, she was questioned as to whether she had imposed discipline on the grievor. She replied that she had not but that she should have done so. She denied that she had included the incident in the performance management and learning report instead of taking disciplinary action.

[65] As for the fact that she and the grievor did not sign the mid-year performance management and learning report for April 1, 2012, to March 31, 2013 (Exhibit E-2), Ms. Lehouillier replied that she had filed the document as is.

[66] As for her November 2, 2012 (Exhibit E-1, Tab 3), email to the grievor and the phrase, "... we will provide you with the support you need to improve in your duties", Ms. Lehouillier said that the support consisted of the grievor's participation in the National Managers' Community Professional Development Forum and the Treasury Board Secretariat's leadership development program, followed by a 360-degree assessment, coaching, informal conflict management, help from her team, and feedback.

[67] When she was asked whether it had been a bit drastic to add to the email that if her performance did not improve, the grievor could be demoted or terminated, Ms. Lehouillier said that it had not been. She added that she had told the grievor that she was following the procedures recommended by Labour Relations.

[68] When she was referred to the grievor's reply dated November 6, 2012, indicating that she did not accept the work plan, Ms. Lehouillier said that the grievor had often expressed her disagreement and said that they were threats.

[69] When she was asked whether it was normal for an employee to see such an email as a threat, which first provided her with assistance, Ms. Lehouillier replied that

*Federal Public Sector Labour Relations and Employment Board Act and
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several episodes of the grievor's performance justified mentioning the possibility of a demotion or termination, including the criticism of an employee's performance. However, I note that that incident occurred on October 22, 2012, before the work plan was implemented.

[70] When she was asked whether she had replied to the grievor in writing, Ms. Lehouillier said that she was certain that she had discussed it with the grievor and that she had told her several times that the plan's objective was to help her.

[71] Ms. Lehouillier said that she had prepared the grievor's work plan commitments. She discussed them with the grievor. Her commitment was to inform the grievor when she did not meet performance objectives.

[72] When she was asked about objective 6, on confidentiality, and why she did not see fit to inform the grievor of the support available to achieve this objective, Ms. Lehouillier replied that she had told her that her office door needed to be closed when discussing an employee's performance and that no training for this existed.

[73] According to Ms. Lehouillier, the objective of the work plan was to help the grievor and to improve her management skills. When she was asked whether noting problems constitutes help, Ms. Lehouillier said that when the grievor made a mistake, she brought it to the grievor's attention through examples. With respect to performance measures, some objectives are not always measurable. When an incident occurred, they often discussed it immediately or in writing afterwards. And Ms. Lehouillier provided feedback every two weeks.

[74] Ms. Lehouillier acknowledged that in part, she considered comments from others, such as Ms. Coghlan, Ms. Kovacs, and Ms. Pinto. Ms. Lehouillier was referred to a document that Ms. Pinto prepared, of which she received a copy on November 1, 2012 (Exhibit S-3). It consisted of complaints about the incident involving the grievor's role in structural equation modelling and other criticisms about the grievor. Ms. Lehouillier said that she did not know if Ms. Pinto had filed a formal complaint. She discussed it with her, and she did not want to pursue it. Ms. Lehouillier did not show the document to the grievor as Ms. Pinto had given it to her in complete confidence.

[75] As for Ms. Pinto's document, of which she received a copy on November 1, 2012 (Exhibit S-3), Ms. Lehouillier was asked in cross-examination to describe that employee's observations. She replied that Ms. Pinto had a fiery temperament.

[76] With respect to Ms. Coghlan, Ms. Lehouillier said that she was an exceptional employee who produced and understood quickly. As for Ms. Chatterton, she said she was an excellent employee with good judgment and good knowledge of material.

[77] In cross-examination, when it was suggested to Ms. Lehouillier that the November 2, 2012, work plan contained seven points that resembled the seven in Ms. Pinto's document, of which she received a copy on November 1, 2012, she said that the plan had been prepared in advance. She maintained that she never spoke with Ms. Pinto or other employees about the work plan or the grievor's lack of judgment.

[78] Ms. Lehouillier was referred to Ms. Pinto's email to her of November 21, 2012, criticizing the grievor and asserting that she sent it based on Ms. Lehouillier's recommendation. According to Ms. Lehouillier, Ms. Pinto came to Ms. Lehouillier's office to tell Ms. Lehouillier about what she went through every day with the grievor and to ask if she could document it. Ms. Lehouillier gave her that permission, since Ms. Pinto felt that it would protect her. Ms. Pinto was frustrated and wanted to put everything in writing. Ms. Lehouillier said, "[translation] She's like that."

[79] When she was asked why she did not inform the grievor, Ms. Lehouillier said that Ms. Pinto had discussed the matter with the grievor. Ms. Pinto wanted to write her own assessment of the situation and sent her the email in complete confidentiality. Ms. Lehouillier did not want to breach that confidentiality by informing the grievor. She added that the work plan covered several of the issues raised by Ms. Pinto. She affirmed that the employees were not aware that the grievor was being subject to a work plan.

[80] With respect to grievor's email to Ms. Lehouillier on November 22, 2012 (Exhibit E-1, Tab 6), Ms. Lehouillier said that the grievor should not have been surprised by the performance management follow-up plan as they had had several informal meetings at which Ms. Lehouillier had provided her with documents and had prepared notes for her after the meetings.

[81] As for her handwritten note about the email, indicating, “[translation] 1 year is enough”, referring to the performance management period, Ms. Lehouillier said that the process had no precise timeline and that it depended on the case. According to her, based on a discussion with Labour Relations, the process could take one, two, or three years.

[82] On the paper copy of the grievor’s email, next to where she states, “[translation] ... I achieved 9 of the 10 objectives set out in my performance appraisal ...”, Ms. Lehouillier made the following handwritten note: “[translation] It is not just about results.” On this point, Ms. Lehouillier explained that at that time, she meant the EC-07 skills and competencies that needed improvement.

[83] On the work plan’s objectives, the grievor also wrote, “[translation] Some of these items are not precise, and I would like to go through them to better understand what is expected of me and how my performance in these areas will be evaluated.” Ms. Lehouillier responded with the following handwritten note: “[translation] No problem.” When she was asked whether that was recognition that the work plan was not precise, Ms. Lehouillier replied that it was not; she acknowledged that she had needed to discuss it, which she did with the grievor for several hours.

[84] The grievor ended her email by inviting Ms. Lehouillier to a meeting facilitated by someone from the informal conflict management office. According to Ms. Lehouillier’s handwritten notes, she refused. She testified that that step had been inappropriate since there was no interpersonal conflict with the grievor, and it was a performance management problem.

[85] The grievor prepared a document outlining her additional achievements (Exhibit E-1, Tab 7) for the purposes of her work plan. She mentioned that one of her employees constantly asked for advice from the director, thus bypassing her authority. Ms. Lehouillier said that it was Ms. Pinto and that she told Ms. Pinto to talk to the grievor when Ms. Pinto asked for her advice about work. However, if an employee wanted to talk to her about something personal, she would not refuse to.

[86] Ms. Lehouillier was referred to notes that she prepared on November 9, 2012 (Exhibit S-5), and that explain the work plan. As for her notes on objective 1 (improve judgment and understanding) that state that the grievor did not properly understand the explanations of concepts or other things, Ms. Lehouillier stated that these were her

observations and those of the team members. With respect to objective 3 (perform management tasks herself), Ms. Lehouillier mentioned that the grievor delegated everything to her team and that she had rarely seen an item that the grievor had produced. Ms. Lehouillier said that as the director, she had also noted it.

[87] On objective 5 (deliver work items on time), among other things, Ms. Lehouillier mentioned that she had lost confidence. When it was pointed out to her that she had made that comment seven days after the work plan was put in place, Ms. Lehouillier replied that the context had to be considered. The grievor set her deadlines herself and several times did not meet them. Ms. Lehouillier had brought it to the grievor's attention even before the work plan was put in place. So, she had no confidence when the grievor provided her with deadlines.

[88] In cross-examination, Ms. Lehouillier specified that she did not give the grievor copies of her notes to herself dated November 9, 2012 (Exhibit S-5).

[89] In cross-examination, Ms. Lehouillier was referred to her email to Ms. Coghlan of December 31, 2012, which summarized their discussion about the grievor of December 20, 2012 (Exhibit E-1, Tab 21). In it, Ms. Lehouillier asked Ms. Coghlan if the summary was accurate and invited her to share other examples of her interactions with the grievor.

[90] One of the examples that Ms. Coghlan provided and that Ms. Lehouillier noted in the email was the help that she had given the management accountability framework team for an hour or an hour-and-a-half. According to the summary of the example, the grievor spent 30 minutes explaining to Ms. Coghlan why she should document what she had done, even though Ms. Coghlan told her that it was not important work. The summary includes the following comment: "[translation] It is a lack of judgment on Shirley's part ...". Ms. Lehouillier testified that it was Ms. Coghlan's comment but that she agreed with it because the grievor's requests made no sense. Ms. Lehouillier could not remember if she shared the example with the grievor.

[91] When she was asked whether it had been humiliating for the grievor to learn that Ms. Lehouillier had told Ms. Coghlan that the team members knew that the grievor did not understand much, Ms. Lehouillier replied that the grievor had not been informed.

[92] Ms. Lehouillier was referred to her email exchange with Ms. Coghlan of March 28, 2013 (Exhibit S-6). The first email, which was from Ms. Coghlan and was sent at 2:26 p.m., asked, “[translation] Do you want more examples?” Ms. Lehouillier’s response, at 2:30 p.m., consisted of just this word, in capital letters: “[translation] YES!” At 2:37 p.m., Ms. Coghlan forwarded an email to Ms. Lehouillier that the grievor had sent her that day at 1:30 p.m. on a comparison of the number of questions in the 2011 and 2014 Public Service Employee Surveys. That email began with Ms. Coghlan’s request that Ms. Lehouillier keep the information confidential. After criticizing the grievor’s work, Ms. Coghlan added that in her opinion, the grievor’s work could not be relied on. When she was asked whether she discussed it with the grievor, Ms. Lehouillier said that she did not remember.

[93] Ms. Lehouillier was referred to her email exchange with Ms. Coghlan of June 5, 2013 (Exhibit E-17), which was after Ms. Lehouillier had left the employer to assume other functions. Ms. Kovacs had replaced her as the acting director and the grievor’s immediate supervisor. Ms. Lehouillier stated that Ms. Coghlan and another employee contacted her because they did not agree with their respective performance management and learning reports that the grievor had prepared. In an email to Ms. Coghlan, Ms. Lehouillier said in the following terms that the grievor lacked judgment: “[translation] OMG! She does not understand. I know, she blamed me too for the SEM and it is clearly HER lack of judgment!” When she was asked whether saying such a thing to an employee who reported to the grievor was also a lack of judgment, she replied that she had also experienced this.

[94] In an email dated January 9, 2013, Ms. Lehouillier asked Ms. Kovacs for her feedback on the grievor. On January 14, 2013, at 4:55 p.m., Ms. Kovacs replied that the grievor did not appear to understand the work she was responsible for and that she had shown worrisome behaviour. At 5:08 p.m., Ms. Lehouillier forwarded her email to Ms. Guilhem (Exhibit E-1, Tab 11). When she was asked whether she had discussed Ms. Kovacs’ email with the grievor in the 13 minutes between receiving it and forwarding it to Ms. Guilhem, Ms. Lehouillier replied that she had not and that seeking client feedback is a good management practice.

[95] When she was asked whether it would have been reasonable to meet with an employee who was the subject of a complaint before concluding that she lacked

judgment, Ms. Lehouillier replied that she had already spoken with the grievor about her lack of judgment and that Ms. Kovacs had brought the example to her attention.

[96] Ms. Lehouillier was referred to the grievor's performance management and learning reports for 2012-2013, which the grievor had not signed (Exhibits S-8 and E-1, Tab 16). The overall rating on the performance management and learning report was "Did not meet" (Exhibit E-1, Tab 16), and the second was "Succeeded -" (Exhibit S-8). Ms. Lehouillier did not recall signing the second performance management and learning report. She was then shown a version that she signed on April 19, 2013, with the rating "Succeeded -" (Exhibit S-8). Ms. Lehouillier was referred to certain differences between the signed (Exhibit S-8) and the unsigned versions (Exhibit E-1, Tab 17). For example, in the "[translation] narrative assessment" section for October 1, 2012, to March 31, 2013, the unsigned version indicates that the grievor met one of the objectives in her work plan, while the signed version indicates that she met four objectives. Ms. Lehouillier replied that she relied on what she had written.

[97] In re-examination, Ms. Lehouillier was asked to explain the differences between the unsigned performance management and learning reports (Exhibit E-1, Tabs 16 and 17) and the one she signed (Exhibit S-8). She said that after submitting the initial report to the grievor, they discussed it, and Ms. Lehouillier made adjustments. She stated that she had no discussions with the grievor between the unsigned report (Exhibit E-1, Tab 17) and the final report (Exhibit S-8).

[98] It was brought to Ms. Lehouillier's attention that Exhibit S-8 indicated that a sticky note had been placed on the document indicating, "[translation] Last performance management agreement given to Shirley on April 19, 2013". Ms. Lehouillier did not seem certain whether it was Exhibit S-8 or Exhibit E-1, Tab 17. In an email to Ms. Guilhem on April 19, 2013 (Exhibit E-1, Tab 16), after meeting with the grievor, Ms. Lehouillier said that the grievor had asked her to revise a few sentences in her performance management and learning report.

[99] In cross-examination about her email to Ms. Guilhem on March 8, 2013, after a meeting with the grievor in which she said that the grievor believed that the employees were talking about her behind her back, Ms. Lehouillier said that she had told her that she could not prevent the employees from coming to see her.

[100] Ms. Lehouillier was referred to the email to Ms. Guilhem on April 4, 2013, which summarized the meeting with the grievor that day (Exhibit E-1, Tab 16). Ms. Lehouillier mentioned in that email that the grievor told her that she had humiliated the grievor in the structural equation modelling incident that involved Statistics Canada. When she was asked why she responded by commenting, “[translation] I humiliated her????!!!”, Ms. Lehouillier said that she did not understand why the grievor had said it and that it was another example of a lack of understanding.

[101] On the grievor’s email to Ms. Lehouillier of April 10, 2013 (Exhibit E-1, Tab 15), in which she alleged that Ms. Lehouillier undermined her authority and credibility by instructing the employees directly, Ms. Lehouillier replied that she redirected the employees to the grievor but that they returned to her because the grievor did not have a manager’s understanding and judgment.

[102] With respect to the grievor’s allegation that Ms. Lehouillier encouraged the employees to see her, Ms. Lehouillier added that she could not close her door and that the employees who reported to the grievor needed to talk to someone they trusted. As for Ms. Coghlan, Ms. Lehouillier said that her performance was very good. She added that it was demotivating to work for someone who did not understand.

[103] In item 3 in the email, the grievor alleged that the work plan was based on value judgments rather than concrete performance criteria. When she was asked to define the term “value judgments”, Ms. Lehouillier replied that it means judgment exercised each workday and added that the grievor needed to improve her key management skills.

[104] Ms. Lehouillier was referred to her email to Ms. Guilhem of April 16, 2013 (Exhibit E-1, Tab 16), sent after her meeting that day with the grievor. In it, she wrote that the grievor had told her that she felt harassed because of the work plan and that the process affected her well-being. When she was asked whether she had noticed that the process had affected the grievor’s well-being, Ms. Lehouillier replied that she was concerned about the grievor’s health because the grievor had said that she was “chasing a train”. Ms. Lehouillier said that she had discussed it with the grievor.

[105] Ms. Lehouillier was referred to her email to Ms. Guilhem of April 11, 2013 (Exhibit S-9), in which she informed Ms. Guilhem of her conversations with Ms. Coghlan on April 10 and 11, 2013. Ms. Lehouillier explained that Ms. Coghlan had come to her

to tell her that given Ms. Lehouillier's departure from the Office of the Chief Human Resources Officer for new duties, she had the impression that she would not have any support from the grievor. When she was asked whether the grievor had had the support of her manager, Ms. Lehouillier, she replied that she had given the grievor everything she could and that she could not do any more. She added that she had even reduced the grievor's workload.

[106] In an email to Ms. Guilhem on June 18, 2013 (Exhibit S-11), Ms. Lehouillier mentioned an encounter with the grievor in an elevator, in which she noticed that the grievor looked sad and tired. When she was asked whether she had any regrets, given that observation, Ms. Lehouillier replied that she did not and that she had told the grievor to think about herself. Ms. Lehouillier said that she had received good references about the grievor but that she might not have been the "[translation] right person" for the position. When she was asked whether she regretted sending the grievor an email saying that she lacked judgment, Ms. Lehouillier replied that she did not since she had talked to the grievor about it. When she was asked what she would do today if she received a complaint that consisted of hearsay, Ms. Lehouillier replied that she would talk to the employees involved.

2. Ms. Kovacs

[107] Ms. Kovacs held an analyst position, classified at the EC-07 group and level, and was a manager on the Public Service Employee Survey team. From April 22 to June 10, 2013, she was the acting director, which had been Ms. Lehouillier's position. She was the grievor's supervisor during that period.

[108] Describing the grievor's performance, Ms. Kovacs indicated that the grievor had difficulty performing her duties as the manager of the Public Service Employee Survey, particularly in terms of timely communications with colleagues, the Public Service Employee Survey team, and Ms. Kovacs. She also stated that the grievor was unable to summarize information and to use it to plan next steps and to implement concrete follow-up measures or communicate them to her team for action. She added that the grievor also had a difficult relationship with several members of her team.

[109] Ms. Kovacs provided several examples. As for communication, several times, the grievor took significant time to respond to urgent requests. When she spoke to the grievor about it, she indicated that she had been unable to respond because of a full

email inbox. Ms. Kovacs then shared practices with the grievor on keeping her inbox clean. The grievor was unable to manage key correspondence. Ms. Kovacs cited as an example a call she received from a representative of Statistics Canada, a key partner, who had been waiting for an email from the grievor.

[110] As for the grievor's relationships with the members of her team, Ms. Kovacs stated that she had been informed of a dysfunction in the team shortly after she assumed the acting director duties. The team members felt that the grievor was not a dynamic manager and that she was not available in a timely manner to discuss the work. They felt that those conditions affected their work, particularly with respect to a high-visibility project.

[111] As for the grievor's ability to understand information and transform it into an action plan, Ms. Kovacs mentioned a meeting they had attended with a director general from Human Resources Services at the Treasury Board Secretariat who was responsible for relations with human resource stakeholders within the government. The meeting was held to obtain advice on how to seek feedback from that group. The next step was to develop a plan to obtain feedback from the group based on a deadline, consisting of a mini-project as part of the larger Public Service Employee Survey project.

[112] After the meeting, the grievor asked many questions about how to follow up on information and translate it into a plan that could be followed. Ms. Kovacs explained repeatedly what had been said at the meeting with the director general and used a whiteboard to illustrate what such a plan might look like. The grievor remained confused about what was required. During the many discussions held over several days, Ms. Kovacs tried many approaches to explain the information obtained and to place it in different contexts, to allow the grievor to follow up. They had committed to their Treasury Board Secretariat colleagues to provide a plan for the next steps, and they did not meet the set deadline. The grievor's initial draft was inadequate, and it led to more conversations and follow-up actions as well as a rewrite. According to Ms. Kovacs, it should not have taken much time for an EC-07 to perform the task.

[113] Ms. Kovacs was then asked to comment on the grievor's team. She described it as difficult. She added that a team with such a configuration needed an organized and available manager who understood the project parameters and who was able to take a

position, plan the next steps, and ensure clear and consistent follow-up. She stated that the team did not have that level of support.

[114] Ms. Kovacs then discussed the tools provided to the grievor to improve her performance. Before becoming the acting director, she met with Ms. Lehouillier, who provided her with the necessary information to support her in the key files of the Public Service Employee Survey and the Management Accountability Framework and to provide her with the context of the grievor's performance management monitoring plan and related documents. Documents on managing difficult individuals were provided to the grievor, including one version while Ms. Lehouillier was the director and another while Ms. Kovacs was the acting director. The employee subjected to a performance management monitoring plan was placed under the supervision of an EC-06 employee. Consequently, the EC-06 employee gained supervision experience by being responsible for supporting the employee in question and carrying out the performance management follow-up plan for the employee, thus giving the grievor more time to work on her projects and to meet deadlines. At the same time, the grievor was relieved of the responsibility of working with a person subjected to a performance management monitoring plan, which takes significant time. In addition, when the grievor contacted Ms. Kovacs for advice on management issues, Ms. Kovacs ensured that she was available after hours, including after 5:00 p.m., 6:00 p.m., or 7:00 p.m.

[115] On April 22, 2013, her first day as the acting director, Ms. Kovacs met with the grievor. She informed the grievor that she would continue to implement the work plan to support her. She wanted to give the grievor an opportunity to ask questions and help the grievor manage expectations as to what Ms. Kovacs could do to help her improve her performance. During that conversation, the grievor mentioned three important points: first, she said she had recently met with her coach; second, she requested a week of vacation because of fatigue, which she was granted; and third, she wanted to resign from her position as the manager of the Public Service Employee Survey to look for other opportunities. Ms. Kovacs informed the grievor that she would do her best to support the grievor on the third point. Ms. Kovacs indicated that they had not discussed why the grievor wished to resign from her position. The grievor wanted to explore other employment opportunities. She made that realization after meeting with her coach.

[116] On April 23, 2013, the grievor asked to meet with Ms. Kovacs. She then informed Ms. Kovacs that after having thought about it, she would continue to occupy the position of the manager of the Public Service Employee Survey. Ms. Kovacs indicated that she would support the grievor's performance of her manager duties. The grievor requested six days of leave, from April 26 to May 3, 2013, inclusively, and suggested that Ms. Kovacs send her any work-related emails directly during her absence. Ms. Kovacs told her that they could develop a protocol that would work better for the team and the project, and the grievor agreed.

[117] On the morning of April 24, 2013, the grievor informed Ms. Kovacs that she preferred to not take leave because there was too much work to do. Ms. Kovacs replied that they would discuss it during their afternoon meeting. At the meeting, the grievor indicated that she wished to take four or five days off. Ms. Kovacs asked if she would sign her performance management and learning report. The grievor replied that she would let her know when she returned to work. Ms. Kovacs recorded her discussions with the grievor from April 22 to 24, 2013, in a note in the file on April 24, 2013. A copy was sent to Ms. Guilhem (Exhibit E-1, Tab 23).

[118] Ms. Kovacs then discussed the grievor's work plan for April 22 to May 14, 2013 (Exhibit E-1, Tab 23), which she had prepared. A copy was provided to the grievor. She stated that she tried many times to discuss each of the work plan's items with the grievor, to support her in performing her duties as an EC-07 manager. Ms. Kovacs scheduled meetings with the grievor to discuss her work plan, but the grievor never attended one to discuss the details of each objective or how to work differently to improve her performance.

[119] As a general observation about the grievor's work plan, Ms. Kovacs indicated that the grievor's long work hours were a vicious cycle that led to fatigue. She required the long hours because of her inability to work at a more sustained pace, to review correspondence, and to respond quickly to emails. To be up-to-date in her work, the grievor was often not available to her team, which more than one team member complained about.

[120] As for the first objective (improve judgment and understanding), an example was provided of a briefing note for the Treasury Board president; its purpose was to obtain authorization to conduct the 2014 Public Service Employee Survey. The grievor's

view was that the title of the briefing note should remain “[translation] For your information” instead of “[translation] For your approval”. The Director General noticed the error at the end of the day and returned it to Ms. Kovacs. That return required an update and the signing of multiple copies. According to Ms. Kovacs, this was an example of a lack of understanding of the nature of briefing materials.

[121] The example provided for the second objective (become flexible and faster in understanding work-related items) was mentioned earlier in this decision, in the issue of the meeting with a director general at the Treasury Board Secretariat’s Human Resources Services.

[122] Under the third objective in the work plan, the grievor was required to perform management tasks herself. During and after the period covered by the reports on the performance management follow-up plan, Ms. Kovacs indicated that when a decision required a member of management to follow up or that the manager show leadership, the grievor did not act as such.

[123] Ms. Kovacs cited the following example, which was not mentioned in the work plan for April 22 to May 14, 2013. On her first day back at work after her May vacation, Ms. Kovacs learned that the team had planned a briefing session with stakeholders in the afternoon and that she was to be the moderator. She met with the team that morning to discuss an approach to working with the stakeholder group and made it clear that she would rely on the grievor as a subject-matter expert for the project. At the meeting, Ms. Kovacs made opening remarks and answered questions. If she did not know an answer, she called on the grievor. Instead of answering the question herself, the grievor called on one of her colleagues. Ms. Kovacs stated that a project manager usually conducts a briefing session. In this case, the Director General asked Ms. Kovacs to lead the session to achieve the desired results. The grievor seemed relieved that Ms. Kovacs took the lead.

[124] On the fourth objective (improve her management style and approach), Ms. Kovacs stated that the grievor’s response, “[translation] You are the boss,” was not a constructive way of expressing dissatisfaction with a decision. She described their working relationship as difficult, given the grievor’s reluctance to hear a message.

[125] The fifth objective (improve informal briefings) proved very difficult for the grievor because verbal briefings were often required. Many times, when Ms. Kovacs

asked her for verbal updates, the grievor replied that she would send her a written update later in the day. It occurred often enough to resemble a trend. The grievor did not provide timely or regular verbal updates.

[126] The sixth objective (keep personnel items confidential) was achieved.

[127] On the seventh objective (supporting and guiding employees), Ms. Kovacs suggested that the grievor reserve time to be available to the employees, which would reassure them and help with the planning of her workload. The grievor replied that she would consider it. She did not make herself available because she had to keep up with her work, not to avoid her team. It was a coping mechanism, but it had a negative effect on the team members and on the support they felt they could receive from the manager.

[128] Ms. Kovacs met with the grievor both informally and daily about work problems. Bilateral meetings were held every week or two. The purpose was to discuss issues related to files and the next steps, to clarify the issues on which she was to follow up, and to identify priorities. They also discussed team issues. It was an opportunity to provide the grievor with support with respect to her performance.

[129] When she was questioned about her interactions with the grievor before becoming the acting director, Ms. Kovacs said that she worked in a different division in the same directorate as the manager of the Data Quality Assurance and People Information Management Team, which handled demographic information about the public service workforce. Ms. Kovacs stated that the Public Service Management Dashboard system, among other things, contained historical information on past results of the Public Service Employee Survey. At that time, her duties included responsibility for the dashboard.

[130] Ms. Kovacs and her colleagues had worked with the grievor and her team to update information in the dashboard component of the Public Service Employee Survey, including how historical information was posted, and to provide additional statistical information. She asked the grievor for the support of her team in testing the dashboard component of the Public Service Employee Survey since they were the experts in the material. The grievor agreed. Ms. Kovacs informed her that her team would be provided with test scripts.

[131] The timeline was announced publicly to the community served by the Office of the Chief Human Resources Officer. The grievor and her team received all the tools needed to conduct the test, which took place over a few days. Ms. Kovacs' team also conducted tests. At the end of the test period, one of Ms. Kovacs' colleagues indicated that the grievor had stated that the system was inaccurate. Information Technology Services was consulted, and following an in-depth conversation with the grievor, it was learned that she was working in a production environment instead of a test environment. Questions were then raised as to why she could not distinguish the two environments. In a follow-up with the grievor, she indicated that she had not received enough information or appropriate advice. Ms. Kovacs expressed the consternation and frustration of her team members with the grievor. As the project manager, Ms. Kovacs had to renegotiate additional test time with Information Technology Services to resolve the issue quickly. She indicated that she had never experienced this with other teams when managing the dashboard.

[132] On the email she sent to Ms. Lehouillier on January 14, 2013 (Exhibit E-1, Tab 11), Ms. Kovacs indicated that it was a response to Ms. Lehouillier's request for feedback on Ms. Kovacs' experience with the managers on Ms. Lehouillier's team, as they had files of interest and would collaborate in the future. Ms. Kovacs' comments were about her relationship with the grievor as an EC-07 peer in the same directorate. Ms. Kovacs testified that it was important that the grievor knew where to send requests and how to mobilize the right people at the right time during meetings. As for following up on the action to be taken, Ms. Kovacs had the same experience as Ms. Lehouillier; namely, as indicated in her email, the grievor did not seem to easily understand following up on the action to be taken.

[133] Ms. Kovacs' email referred to the grievor's inappropriate comments about a colleague's menstrual cycle. The grievor told Ms. Kovacs that the colleague was agitated, unstable, and sensitive and asked if her behaviour was due to her menstrual cycle. Ms. Kovacs indicated that she was a colleague of the grievor at the time and that she could not do anything but be dismayed.

[134] Ms. Kovacs then discussed the options the employer considered with respect to the grievor. In May 2013, she met with the grievor to inform her that an assignment had been negotiated for her to hold an AS-06 position on the official languages team in the Governance, Planning, and Policy Sector, Office of the Chief Human Resources

Officer, Treasury Board, where she would have no supervisory or managerial responsibilities, and she would receive salary protection at the EC-07 group and level until March 2014. The grievor would also not be subjected to a work plan or a performance management plan unless the new manager felt that such a plan was necessary. That position would have given her the opportunity to work in another capacity without exercising a supervisory role and to demonstrate that she could successfully handle key departmental files. In their initial conversation, the grievor was not open to the idea of changing her occupational group and level, even if she benefitted from salary protection. She asked Ms. Kovacs to provide her with other options. Ms. Kovacs did her best to convince the grievor to accept the assignment since as it would have given her other opportunities to occupy an EC-07 position the public service.

[135] The second option presented to the grievor was an EC-07 position in another part of the Office of the Chief Human Resources Officer with the continued management of her performance. The position had no management or supervisory responsibilities, but the grievor would still have been subjected to a work plan. She accepted the assignment offer, which was from June 10 to December 10, 2013. Ms. Nassrallah and Ms. Kovacs both committed to supporting the grievor in her job search. Although the grievor no longer reported to her, when Ms. Kovacs saw an announcement for a job opportunity, she would email the grievor a link to the assignment, to encourage her in her job search.

[136] By the end of June 2013, when the 2012-2013 performance management and learning reports prepared by the grievor were distributed, three members of the Public Service Employee Survey team challenged their reports. One employee requested a meeting to discuss her report, which led to a difficult conversation. The employee argued that the employer should not allow the grievor, whom she considered an incompetent manager, to assess her work, and she challenged some allegations in her report. At the meeting, which the grievor attended at the employee's request, the employee was perturbed and emotional about her report. After the meeting, the employee burst into tears in Ms. Kovacs' office and asked that her performance be reassessed. Ms. Kovacs then met with the grievor, who also burst into tears due to the difficulty of working in her new assignment. It was then agreed that Ms. Lehouillier would review the performance management and learning reports of the three Public Service Employee Survey team members.

[137] Ms. Kovacs referred to her email exchange with the grievor between May 22 and June 14, 2013 (Exhibit E-3). The grievor raised issues with the work plan process. She felt that the objectives were not clear, that Ms. Kovacs' comments were not based on her direct observations of the grievor, and that the work plan process was unethical. In her May 22, 2013, email, the grievor asked for a review of the use of the work plan process to resolve issues. On June 10, 2013, Ms. Kovacs replied that as the acting director, she was required to continue applying the work plan.

[138] In cross-examination, it was emphasized to Ms. Kovacs that in her recorded briefing note about her discussion with the grievor on April 22, 2013 (Exhibit E-1, Tab 23), she stated that the grievor had indicated to her that she wished to resign from her position as the manager of the Public Service Employee Survey. For her part, in her email of May 22, 2013 (Exhibit E-3), the grievor stated that Ms. Kovacs had indicated that the grievor could no longer continue to occupy her position and that she had proposed that the grievor occupy an AS-06 position. When she was asked why she did not respond on June 10, 2013 to the grievor's allegation, Ms. Kovacs indicated that when she received the grievor's email, she consulted Labour Relations about ensuring that the response was consistent with policies and about whether she should respond categorically to each paragraph. She was informed that she was not required to respond to the grievor's comments as they were opinions. She indicated that she did not write the email but that it indicated her position.

[139] When she was asked why in her June 10, 2013 (Exhibit E-3), email she told the grievor that the performance management monitoring plan would continue during her assignment, Ms. Kovacs stated that although the grievor was under her authority, the grievor contested her authority to carry out the plan, questioned the legitimacy of the program, and claimed that they had worked together for only eight business days due to their respective holidays. Ms. Kovacs affirmed that there had been other days on which to directly observe the grievor's ability to carry out her responsibilities. When she was asked whether she was aware of article 37 of the collective agreement, which provides for a six-month period for the performance management and learning report, Ms. Kovacs indicated that she was not aware of it but that she was aware of her responsibility to manage performance.

[140] In an email to Ms. Guilhem on May 6, 2013 (Exhibit S-12), Ms. Kovacs asked for advice on the AS-06 position that would be offered to the grievor, who was to return to

work the next day. When she was asked whether she foresaw a difficult discussion with the grievor, Ms. Kovacs replied that the purpose was not coaching on difficult conversations, that she had been a manager for many years, and that she had already had difficult discussions. She wanted advice on the meeting parameters and anticipated questions that the grievor might ask her. She stated that she was well prepared and informed for the meeting and that she was able to have a productive meeting were it decided that she would lead it.

[141] When she was asked why her email to Ms. Guilhem of May 14, 2013, summarizing her discussion on that day with the grievor (Exhibit S-14), indicated that the grievor had had only one day to reflect on the AS-06 position offer, Ms. Kovacs replied that another candidate was being considered for the position and that management wanted to fill it quickly. According to the terms of the assignment, the grievor would report to an AS-07, would benefit from salary protection for the duration of the assignment, would have no supervisory responsibility, and would not be subjected to a performance management monitoring plan unless the manager deemed it necessary. Ms. Kovacs stated that many employees request assignments to change organizations and that in the grievor's case, the assignment was proposed to her as a performance management tool to demonstrate that she could meet the competencies of an AS-06 position. The grievor asked that Ms. Kovacs approach senior management to find other opportunities at the EC-07 group and level.

[142] Ms. Kovacs was asked to explain why she specified in the email that she had clearly indicated to the grievor that remaining in her position as a manager for the Public Service Employee Survey was not an option. She indicated that management adopted that position based on performance management and learning reports and the need for the Public Service Employee Survey team to be led by a senior manager with the ability and competencies to provide support. It had been demonstrated that the grievor could not perform her duties as the manager of the Public Service Employee Survey.

[143] Ms. Kovacs was referred to her email exchange with the grievor on May 17 and 21, 2013 (Exhibit S-15), about a six-month EC-07 assignment with Ms. Tattrie, in which Ms. Kovacs stated that she, Ms. Nassrallah, and Ms. Tattrie would help the grievor with her job search during that period. Ms. Kovacs stated that at the end of the assignment, if the grievor were successful, she might be able to return to the same directorate as an

EC-07 but that she would be subjected to a performance management monitoring plan. If she were successful in meeting the objectives as an EC-07, she would then be able to find a position with supervisory functions. Management's commitment was not to find a job for the grievor but to help her with her job search, answer her questions, and review her résumé. When she was asked why she offered to help an incompetent employee, Ms. Kovacs replied that the grievor had repeatedly expressed interest in leaving the Public Service Employee Survey organization as she did not feel that she was the right person for the position. Ms. Kovacs affirmed that the grievor could not manage the Public Service Employee Survey and the Public Service Employee Survey team given the skills she demonstrated while reporting directly to Ms. Kovacs.

[144] Ms. Kovacs was referred to her email exchange with Ms. Guilhem on May 17 and 21, 2013 (Exhibit S-16), about preparing a letter for the grievor's assignment to Ms. Tattrie's team. In her May 17, 2013, email, Ms. Kovacs indicated that the purpose of the assignment was to allow the grievor to find another job. In her May 21, 2013, response, Ms. Guilhem asked what would happen to the grievor once her assignment ended and whether she would remain on Ms. Tattrie's team or return to her substantive position.

[145] Ms. Kovacs testified that the idea behind the assignment was for the grievor to be able to demonstrate that she could achieve the objectives of the EC-07 position. When she was asked about Ms. Guilhem's question about what would happen at the end of the grievor's assignment, Ms. Kovacs replied that several discussions had taken place with Ms. Nassrallah and that if the grievor met the EC-07 objectives in her new environment, she would return to her substantive position.

3. Ms. Tattrie

[146] At the relevant time, Ms. Tattrie was the senior director in the Performance Management Division, Governance, Planning, and Policy Sector, Office of the Chief Human Resources Officer, Treasury Board. Her unit's responsibilities included implementing the new performance management directive that was approved in May 2013 and supporting departments or agencies in the core public administration with a view to implementing the directive and creating uniform programs. Her unit consisted of a small team.

[147] Ms. Tattrie indicated that the grievor joined her unit because the Management Committee members had discussed possibilities for her. The grievor also contacted her

about it and believed that it was a good unit for her. Her responsibilities were to manage the question-and-answer process that had been established to help organizations that needed information interpret the directives, to ensure that they were practical and fair.

[148] As for work tools, Ms. Tattrie indicated that basically there were 34 subject-matter experts from diverse fields, including Human Resources, Privacy Protection, and Legal Services. When a question was received, the grievor had to review it and decide on the expert who should receive it. That person provided the grievor with the response content, and she then completed the layout for the communication to be sent to the person who had asked the question. The response was also posted on the Treasury Board Secretariat's website.

[149] Ms. Tattrie summarized the grievor's work performance in the unit as unsatisfactory because she had been unable to meet the expectations associated with her assigned work. Ms. Tattrie identified two concerns about the grievor: first, she did not have the capacity to think things through. For instance, she was not comfortable sending questions to the subject-matter experts because she felt that she had to first provide the content, which confused the experts. Second, the grievor developed more processes than were needed.

[150] Ms. Tattrie indicated that the grievor had been informed that the subject-matter experts were responsible for the information sent and that the performance management unit facilitated only the preparation of the responses. The grievor indicated that she was reluctant to use the subject-matter experts because she had not met them in person.

[151] The tools provided to the grievor included expertise and support from other performance management team members, bilateral meetings of an hour or more to discuss specific issues, clarifications on expectations, and feedback. Key were the subject-matter experts and their ability to provide information.

[152] When she was referred to an undated page of the document entitled, "[translation] Work plan and reporting information per the assignment letter" (Exhibit E-1, Tab 26), Ms. Tattrie indicated that the grievor had provided her with the document but that she did not recall the date. It was during a discussion about the letter assigning the grievor to the performance management team.

[153] Since the grievor was unhappy with her previous work plan, Ms. Tattrie told her to prepare her own work plan. Ms. Tattrie wrote comments on the grievor's first draft (Exhibit E-4) and told her that the work plan could be simplified. Initially, Ms. Tattrie held weekly bilateral meetings and provided feedback and clarification on expectations. She also provided verbal feedback to the grievor every day. She then decided that there would be periods of written commitments. She referred to a series of monthly feedback documents for June 10 to December 10, 2013, which contained Ms. Tattrie's comments based on the bilateral meetings (Exhibit E-1, Tab 27). Those documents were entitled, "work plan".

[154] The first document covered June 10 to July 19, 2013. During that period, Ms. Tattrie was on leave from June 13 to 19, 2013, and the grievor was on leave from June 17 to July 2, 2013. As indicated in the document, during that period, the grievor's first objective (pending items from the Public Service Employee Survey) was to complete the files of her former work on the Public Service Employee Survey. Her second objective was to transition to her new assignment over a two-week period by reviewing the performance-management-implementation project documents, meeting with team members to understand their responsibilities, and, as directed by Ms. Tattrie, understanding her role in the project. In her comments on this objective, Ms. Tattrie noted that the grievor was happy to work on the project. However, she noted that she found it hard to identify the grievor's strengths with respect to the skills and competencies of an EC-07 position and how she could contribute to the project. Ms. Tattrie indicated that she wanted an idea of how the grievor could contribute to the team.

[155] The grievor's third objective was to evaluate bids for a change-management contract. Ms. Tattrie assigned the grievor to the team that was to evaluate three of the five bids received for the contract. The team consisted of Ms. Tattrie, the grievor, and one other person. The bids were to be reviewed individually, and a meeting was then to be held to discuss individual assessments and reach a consensus. Ms. Tattrie noted that the grievor evaluated all the bids in the required time, although she had to devote herself to it full-time to meet the deadline and requirements of the request for proposals. She stated that the grievor contributed well to the project.

[156] The grievor's fourth work objective, and the main one according to Ms. Tattrie, from June 10 to July 19, 2013, was to lead the development and ongoing management

of the performance management questions and answers. In the feedback document for that period, the grievor proposed that she be responsible for the questions and answers. The work plan for July 22 to August 30, 2013, and the plans for the later periods indicated as the first work objective that the grievor was responsible for developing and managing performance management questions and answers. In her comments, Ms. Tattrie indicated that the grievor had encountered many difficulties with thinking things through. She was responsible for preparing a work plan for the question-and-answer process and for producing responses for the 55 questions, each of which was to be classified. The content sources for the responses were the subject-matter experts. She had to ensure that the responses were drafted and reviewed by the Stakeholder Tools Committee project and to then prepare them in their final format for publication.

[157] Ms. Tattrie knew that the grievor was experiencing difficulties, based on their discussions at the bilateral meetings. She had difficulty understanding the triage process and how to prepare questions and answers in their final format. Part of that difficulty arose from her reluctance to use the subject-matter experts, despite the encouragement she received, which would have freed her so that she could focus on organization rather than on drafting the responses. In addition, when drafting the questions and answers, the grievor could not understand that she had to anticipate the potential reactions of the stakeholders, such as bargaining agents, to incorporate them when developing the responses, which required revising them several times. Ms. Tattrie noted that after several discussions, the grievor was unable to create a work plan for the questions and answers. Therefore, she assigned the grievor specific tasks to perform each week. The grievor seemed more comfortable with that approach. Ms. Tattrie's comments also indicated that as discussed with the grievor, while she was the grievor's acting supervisor, the grievor's performance was not that of an EC-07.

[158] The next period covered by the grievor's work plan was from July 22 to August 30, 2013. She was on leave from August 13 to September 3, 2013. During that period, she took part in the Stakeholder Tools Committee to better understand departmental needs. Ms. Tattrie increased the bilateral meetings to twice a week during this period, to provide the grievor with the level of precision and support required to perform her duties. She indicated that the grievor's situation did not change during that period and that the same concerns arose. Ms. Tattrie noted that the grievor continued to have trouble finding a high-level understanding of the answers to the questions, to

coordinate the responses. The responses were reviewed with her at the bilateral meetings as she still had problems writing and revising them to meet the expectations of the different stakeholders. During the grievor's leave, Ms. Tattrie categorized all the questions and selected those to be posted on the Treasury Board Secretariat's website.

[159] On the work plan for September 3 to 30, 2013, Ms. Tattrie emphasized the grievor's good collaboration with her colleagues and the support she gave them. Ms. Tattrie pointed out that the grievor had problems working effectively, using available resources, and thinking things through.

[160] Ms. Tattrie continued to approve the grievor's work. The grievor still did not use the subject-matter experts and still prepared answers that often did not answer the questions or that did so only partially. When the questions were not clear, the grievor hesitated to contact the authors for clarification.

[161] Ms. Tattrie indicated that when the subject-matter experts did not cooperate, the grievor had to consult her rather than wait to inform her of the difficulties when they examined the questions. During that period, they continued their twice-weekly bilateral meetings; each was approximately one hour. The purpose of the meetings was to reconfirm Ms. Tattrie's expectations with respect to the grievor's management of the questions and answers, to provide feedback, and to support her work. Ms. Tattrie noted that the grievor had indicated that she was sometimes resistant to feedback but that she was making efforts in that area. Ms. Tattrie noted that the grievor had a better understanding of performance management and that she had gained some confidence. However, in her testimony, she indicated that she had to continue to explain her expectations to the grievor. Ms. Tattrie testified that she saw no improvement in the grievor's work.

[162] With respect to the work plan for October 1 to 31, 2013, Ms. Tattrie emphasized the grievor's collaboration with her colleagues. She noted that the grievor had improved her knowledge of the performance management project during that period. In her testimony, she affirmed that the grievor seemed to have no desire to follow directives since the grievor continued to write answers to the questions without first consulting the subject-matter experts. However, she continued to approve the grievor's work. She noted that the grievor continued to be resistant to feedback, which frustrated the grievor and prevented her from carrying out her responsibilities.

[163] During that period, the grievor volunteered to prepare a fact sheet on the probationary period, but she did not fully seek the participation of the subject-matter experts for comments, which resulted in a major revision. Ms. Tattrie indicated that her focus was on three competencies. As for the ability to think things through, Ms. Tattrie advised the grievor that when drafting the questions and answers, she had to put herself in the position of an employee, a manager, or a bargaining agent. With respect to strategic thinking, Ms. Tattrie said that the grievor was sometimes unclear; for example, when indicating the benefits of performance management. With respect to the third competency, judgment, Ms. Tattrie referred to the fact that the grievor did not sufficiently use the subject-matter experts. Ms. Tattrie indicated that therefore, the grievor was unable to perform the duties of an EC-07 position.

[164] Ms. Tattrie's comments on the work plan for November 1 to December 10, 2013, were identical to those she made on the period before it. When she was asked why her comments did not change from the period before it, she replied that the grievor's performance did not change.

[165] The grievor provided her comments in response to those of Ms. Tattrie on the work plan documents for each period from June 10 to September 30, 2013 (Exhibit E-5). Ms. Tattrie said that she had not discussed it with the grievor. She did not know when the grievor gave her the document since she had only the paper copy; she did not know when the grievor emailed it to her. However, I note that Ms. Tattrie's email of January 30, 2014 (Exhibit E-1, Tab 28), indicated that she received the document on November 14, 2013.

[166] Ms. Tattrie referred me to two sets of questions and answers with changes tracked (Exhibits E-6 and E-7). She emphasized that she used them in the bilateral meetings with the grievor to indicate why a revision was required, to make corrections.

[167] Ms. Tattrie stated that one of the grievor's responsibilities was to create a tool for tracking questions and answers. The document that the grievor prepared and submitted to her (Exhibit E-8) caused concern because the format was not the same as that used in the other tracking tools. The objective was to allow the team members to quickly check the status of the questions. Ms. Tattrie indicated that she and the grievor had spent considerable time discussing the format. The main concern was where to indicate the organization that asked the question, which usually came first. According

to Ms. Tattrie, compared to the standard format, the format that the grievor presented increased the workload and was harder to understand.

[168] Ms. Tattrie stated that the Chief Human Resources Officer asked her to explain why she had not provided her comments on the monthly work plan feedback documents for the first three plans, namely, those from June, July, and September 2013. She indicated that as stated in her email of January 30, 2014 (Exhibit E-1, Tab 28), bilateral meetings became more frequent as of July. At those meetings, she provided comments to the grievor on specific tasks as part of her work, as well as verbal feedback. The grievor did not supply the agreed template for comments before she returned from vacation in September 2013. That email reads as follows:

...

When Shirley arrived in June 2013, she indicated that she did not agree with the format of the template that had been used in her previous position to manage her performance. Her major concern was that she felt the format and the content did not reflect her performance and that it was not measurable - specifically the competencies and how the work was accomplished. I told her at that time that she should propose a template but it did need to capture not only what she accomplished but how she accomplished the work and we would discuss it. We had a bilateral once a week and at each bilateral I asked her for an update on the proposed template. She indicated that she was working on it. Regardless of the delay I was providing her with ongoing verbal feedback at each bilateral as well as written comments/track changes on specific pieces of work which I reviewed with her. I provide concrete direction on issues with the work and how she could improve or work more efficiently.

In July bilateral meetings were increased to twice a week, as Shirley required more time with me to review responses that continued to need significant revisions. Shirley was away for three weeks in August and in mid-September she provided the proposed format which did include competencies such as thinking things through, strategic thinking, working efficiently with others. After a number of revisions we agreed on a format. I continued to provide her oral and written feedback through using track changes and written changes on documents she had prepared and discussing why the changes were required and how she could improve. For example using the subject matter experts rather than wasting time doing research and developing responses that were not correct resulting in additional work for the subject matter experts and herself. She did comment a number of times that it was not necessary to provide the track changes it could just be provided verbally. I told her that no, they needed to be provided in this format as she would have a better understanding of the extent of

the revisions required. There was no improvement in the extent of the revisions over the five month assignment.

I provided Shirley with three months of written feedback in the template on September 16th. I read through the comments with her and then asked her if there was anything she had not heard in our bilaterals. She indicated no. I also asked her to provide me with comments which she did on November 14, 2013 verbally and in a word document - she did not put her comments on the template as it was designed for and when asked to she said no. Her comments were that the written feedback was too negative and that this would mean that she had not been successful in the assignment. She was often inconsistent recognizing that she could not do the work but then indicating that she did not have performance issues. Her concern in the comments were that my comments were negative - she did indicate they were incorrect - but if left as they were the assignment would not be successful.

I continued until the end of her assignment December 10, 2013 to provide feedback on specific pieces of work and provide overall comments and examples of continued issues with her ability to think work through and working with others, as she continued not to use subject matter experts effectively or efficiently - instead doing research that was not required. Shirley did not provide any written comments on the first three months of completed templates. I prepared the next two months comments for the grid and provided them to her verbally but I found that Shirley seemed more open and able to process the verbal feedback based on specific work products that the overall comments in the template.

...

[Sic throughout]

[169] In cross-examination, Ms. Tattrie was referred to her email to the grievor of November 18, 2013, which indicated that she had attached work plans (Exhibit S-17). She noted that the plans were those for June, July, and September 2013.

[170] Ms. Tattrie was referred to the undated one-page document entitled, "Work plan and reporting information per the assignment letter" (Exhibit E-1, Tab 26), in which the sixth item indicated that a monitoring meeting was held with Mr. Béliveau on July 23, 2013. Ms. Tattrie felt that the meeting was about training, because the grievor had been assigned to the performance management team. When Ms. Tattrie was asked whether she and Mr. Béliveau worked together to develop a learning plan for the grievor, she replied that they did not because the grievor had received training the year before, and she had not confirmed the resources she needed.

[171] Ms. Tattrie was then referred to her email exchange with Mr. Béliveau on July 22, 2013 (Exhibit S-18), in which she stated that she did not feel that additional mentoring would help the grievor and that in her view, the grievor should consider other positions. Ms. Tattrie pointed out that the grievor had told her that she had received mentoring the year before and that she had found the exercise unnecessary. The grievor had also mentioned another position, and Ms. Tattrie had put her in touch with a career counsellor. Ms. Tattrie did not recall the date of those discussions with the grievor, but she felt that they had taken place around the date indicated in the emails.

[172] In re-examination, when she was asked why she sent the three work plans to the grievor on November 18, 2013 (Exhibit S-17), Ms. Tattrie replied that she had discussed all the plans with the grievor before November and that she sent them to her only because, according to the agreement, she had to give the grievor written feedback after discussing certain issues. She did not send them earlier because the grievor was upset in the bilateral meetings and was often emotional and in tears. She was more receptive to verbal directives. Written comments increased her anxiety because of the comments made in her previous position. Ms. Tattrie noted that they had reviewed her written comments based on the grid and that she asked the grievor if there had been any changes.

4. Mr. Béliveau

[173] On June 10, 2013, Mr. Béliveau took over from Ms. Lehouillier. His interactions with the grievor from then on were quite limited, consisting of two or three conversations that focused primarily on the performance management and learning reports of the members of the Public Service Employee Survey team.

[174] Mr. Béliveau stated that on June 11 or 12, 2013, the grievor met with one of her employees on the Public Service Employee Survey team, and it did not go well. The meeting was about the employee's performance management and learning report. The employee behaved disrespectfully, and the grievor considered leaving if things did not improve. Ms. Nassrallah told her that the situation was being taken seriously. The employee apologized to the grievor and was reprimanded for her behaviour.

[175] Since questions arose about the performance management and learning reports that the grievor had prepared for the Public Service Employee Survey team,

Mr. Béliveau asked Ms. Lehouillier to review them. She changed the appraisal ratings for some team members.

[176] The grievor wanted to know why the performance management and learning reports had been reviewed. Mr. Béliveau met with her about it in late June or early July 2013. He explained that Ms. Lehouillier would have signed the reports due to certain management deficiencies on the grievor's part. They discussed one person in particular (not the employee referred to in paragraph 174) for whom the grievor assigned the rating "Succeeded", while Ms. Lehouillier assigned "Succeeded -".

[177] When Mr. Béliveau asked the grievor to explain the rating, she replied that the work had been done on time. He then asked her about the quality of the work, and she replied that it had left something to be desired. Mr. Béliveau then explained to her that work assessments include not only deadlines but also quality. When he asked her if she felt that the employee's performance met the expectations of his position, the grievor refused to answer.

[178] Near the end of July 2013, Mr. Béliveau met with the grievor and gave her a letter dated July 23, 2013, in response to several emails that she had sent him and Ms. Nassrallah (Exhibit E-9). His letter reads as follows:

[Translation]

...

I present this letter to you in response to your emails and letters of the last few weeks, in which you expressed to us your disagreement with respect to your performance appraisal and your unsatisfactory performance action plan.

Since November 2012, you have been the subject of regular work plans to address the difficulties you face in carrying out your EC-07 duties. When that performance plan was put in place, your shortcomings and the employer's expectations were clearly identified, several tools were made available to you, and you were advised that if your performance did not improve, you would face demotion or termination in accordance with the relevant guidelines.

Despite your many exchanges with Suzanne Lehouillier (since November 2012), and then with Deborah Kovacs (who replaced her in April 2013), you still do not recognize that your performance is problematic and that you need to take charge of it, so that you may improve it. The quantity and content of your communications also demonstrate your lack of commitment to resolving the situation. The employee's cooperation is essential in

an action plan for unsatisfactory performance. Therefore, I count on your close cooperation as of today. If you do not comply with this directive, I will have no choice but to immediately terminate your employment at the [Treasury Board Secretariat].

I remind you that your temporary assignment with the Performance Management Division was implemented as part of the formal process of managing your performance, which began in November 2012. Although you are under the supervision of another manager during this assignment, you still hold the EC-07 position with the [Public Service Employee Survey] and the MAF team. The results of this assignment will be used to make the decision to keep you on the job if your performance improves or to terminate your employment if your performance remains unsatisfactory. Thus, it is essential that Christine [Nassrallah] or I remain informed of the results of this assignment.

...

[179] The letter indicated that it was very important that the grievor cooperate with respect to the work plan, to ensure its success. She asked that her performance management and learning report be reviewed, but Mr. Béliveau refused. He testified that she had told him that she was looking for another job. He offered her help, and she said that she might send him her résumé once she had prepared it. However, she did not follow up on it.

[180] In cross-examination, Mr. Béliveau stated that his response to the grievor's request for a review of her assessment had been emailed to her in advance and that he had explained that Ms. Lehouillier had had sufficient information when she prepared her assessment.

[181] When it was noted to Mr. Béliveau that his July 23, 2013 (Exhibit E-9), letter to the grievor indicated that she would be terminated unless she cooperated with her work plan, Mr. Béliveau replied that was exactly what had been written.

[182] In re-examination, Mr. Béliveau stated that the July 23, 2013, letter had been prepared around July 20 or 21, 2013, with the help of Labour Relations and Ms. Nassrallah.

5. Ms. Nassrallah

[183] Ms. Nassrallah was Executive Director, Strategic Infrastructure, Information Management and Research, Governance, Planning, and Policy Sector, Office of the Chief Human Resources Officer, Treasury Board, beginning on November 21, 2011. Ms.

Lehouillier reported to her and was responsible for the Management Accountability Framework and surveys team. Ms. Nassrallah discussed the grievor's performance with Ms. Lehouillier, Ms. Kovacs, and Mr. Béliveau.

[184] Ms. Lehouillier indicated to her that there were shortcomings with the grievor's performance in terms of interpersonal relationships, judgment, and understanding. Ms. Nassrallah asked her if the grievor had been mentored to manage the Public Service Employee Survey Team and the file. She wanted to ensure that the grievor had received the necessary training for the duties of her position. She supported Ms. Lehouillier with respect to the grievor's performance management plan. Ms. Lehouillier confirmed to her that the grievor had access to training, that she had met with the grievor and had advised her on her daily duties, and that she continued to support the grievor so that she would receive the necessary mentoring.

[185] In her discussions with Ms. Kovacs, Ms. Nassrallah told her that the grievor needed mentoring and that a different job had to be found for her. Around May and June 2013, Ms. Nassrallah contacted a colleague, Marc Tremblay, Executive Director, Official Languages, Governance, Planning, and Policy Sector, Office of the Chief Human Resources Officer, Treasury Board, about the possibility of an assignment in his department. An AS-06 position was offered to the grievor. Although she would have benefitted from salary protection at the EC-07 group and level, she did not accept the offer.

[186] In her discussions with Ms. Kovacs, Ms. Nassrallah mentioned that the performance management plan begun by Ms. Lehouillier had to be continued. According to Ms. Nassrallah, the most important thing was for the grievor to establish a good relationship with the Public Service Employee Survey team so that she could continue to improve her judgment skills and support the delivery of the team's expected results. There was reason to believe that there were problems and challenges that had to be resolved within the team. Discussions with the grievor on her performance were an opportunity for her to review her performance management and learning report and to focus on the important issues.

[187] Discussions were also held with the Management Committee, which was made up of Mr. MacLeod, Assistant Deputy Minister; Ms. Nassrallah, Executive Director; and Ms. Lehouillier and Ms. Kovacs, Director and Acting Director, respectively.

Ms. Nassrallah stated that in the Governance, Planning, and Policy Sector, the practice was to review each employee's performance collectively with the Management Committee. The purpose was to discuss, receive the director's recommendations, and consult with respect to labour relations.

[188] In the grievor's case, the Management Committee reviewed her shortcomings and her strengths. The following shortcomings were noted: a lack of judgment, some problems with her team members, and a lack of quick understanding of a file's essence and contents. Ms. Lehouillier mentioned the grievor's shortcomings to the Management Committee; its members raised parts of the file on which other members of management had commented.

[189] As to how the Management Committee operated, Mr. MacLeod's practice was to meet with the entire team every six months for the mid-year performance management and learning report and at the end of the fiscal year to share his objectives and priorities, including the expectations of each director and executive director. In accordance with the practice that the Management Committee and Ms. Lehouillier followed, the director provided ongoing and day-to-day feedback to each team member. Depending on the team member's performance, the director provided positive or negative results to address shortcomings or problems, if any, and to continue positive results.

[190] As for the link between the performance measurement and monitoring directives and the Management Committee with respect to the grievor's feedback, Ms. Nassrallah stated that the Public Service Employee Survey was a priority for everyone, including the deputy minister and the assistant deputy minister. The purpose of the feedback was to ensure that the priority was supported, that the project budget was well-managed, and that the deadline was met. Employee management is important, and comments were made about problems with the relationship between management and the members of the Public Service Employee Survey team and the team's performance or the quality of the delivered product.

[191] The grievor's performance management plan continued with Mr. Béliveau. He was to continue to mentor her and give her the opportunity to work somewhere other than in the Public Service Employee Survey workplace. In addition, while the grievor was on a six-month assignment under Ms. Tattrie's supervision, her substantive

position remained that of the manager, Public Service Employee Survey, Governance, Planning, and Policy Sector, Office of the Chief Human Resources Officer, Treasury Board.

[192] Ms. Nassrallah testified that she had not discussed the grievor's performance with her. The grievor saw her two or three times between May and June 2013, and their discussions were general. Ms. Nassrallah told the grievor that Ms. Lehouillier had spoken with her about the grievor's performance shortcomings but with no details. Ms. Nassrallah also pointed out to the grievor that she had heard about labour relations problems with members of the Public Service Employee Survey team. They were general discussions that did not address the grievor's daily difficulties. Ms. Nassrallah discussed the importance of the file, of having productive relationships with her team members, and of paying close attention to their perspectives. She also mentioned the importance of being very familiar with leadership skills and of putting them into practice to promote a productive and collaborative workplace.

[193] When Ms. Lehouillier announced her departure, Ms. Nassrallah was aware of the problems on the Public Service Employee Survey team. She invited each team member to meet with her individually to obtain their perspectives on the problems. The employees tried to not be negative about the grievor but expressed that there were challenges related to communication and the lack of harmonization between what had to be done and what was done. There was also a lack of leadership and difficulty understanding the content and expertise in the survey file. The team members sought clear direction from the grievor and wanted to be inspired by her rather than sometimes having to do her job. For example, the grievor took time to understand the basis of a question. Some team members had survey experience, understood the nuances, and had to spend considerable time with the grievor to highlight what was important and what they already knew. Their expectations of the grievor were not met in terms of management, clarity, and support in the context of file and personnel management. Some team members wanted to continue working in good faith with the grievor to address the challenges and problems but others, given their experience since she arrived, were less optimistic.

[194] Management's actions to improve the grievor's performance included coaching sessions at the School of Public Service, the Treasury Board Secretariat's leadership development program (see Exhibit E-10), participating in the National Managers'

Community Professional Development Forum that had a leadership theme (see Exhibit E-11), and Ms. Lehouillier's daily mentoring.

[195] Ms. Nassrallah was referred to the grievor's email to her dated April 18, 2013, about Ms. Lehouillier's work plan and actions (Exhibit E-12). At paragraph 8 of that email, the grievor alleged that Ms. Lehouillier had said that she had not made the decision to assign the grievor the "Did not meet" rating; the Management Committee had done so. According to Ms. Nassrallah, Ms. Lehouillier had recommended that rating and the Management Committee had confirmed it, based on discussions. Although at paragraph 10, the grievor wrote that she was considering filing a harassment complaint against Ms. Lehouillier, she did not do so.

[196] Ms. Nassrallah stated that she did not speak with the grievor about the contents of the April 18, 2013, email on Ms. Lehouillier's work plan and actions (Exhibit E-12), as performance management was between the director and the grievor. Ms. Nassrallah stated that she was convinced that Ms. Lehouillier was working in good faith to help the grievor improve her work and to support her. She also did not discuss the email's contents with Ms. Lehouillier.

[197] Ms. Nassrallah was then referred to an email the grievor sent to her the next day, April 19, 2013, about her performance management (Exhibit E-13). She did not discuss its contents with the grievor. When she was asked whether she had discussed it with Ms. Lehouillier, she replied that she had not done so specifically, since the performance management and learning report was part of the director's responsibilities.

[198] Ms. Nassrallah was referred to her letter to the grievor of June 6, 2013, and to emails in May 2013 related to it (Exhibit E-1, Tab 24). That letter reads as follows:

[Translation]

...

Subject: *Unsatisfactory performance action plan/assignment*

...

The purpose of this letter is to confirm the comments made at your May 17, 2013, meeting with your acting director, Deborah Kovacs, about your performance and the implementation of a plan to assess your EC-07 competencies without personnel-supervision tasks.

First, to address the significant problems that you face in your manager duties in the Governance, Planning, and Policy Sector (EC-07), you have been subjected to a formal performance plan since November 2012. Despite support from management and the considerable amount of training you received this last fiscal year, your performance plan in place since November 2012 and your April 2013 annual performance appraisal indicate that you are still not able to perform your duties satisfactorily for your level and classification.

Additionally, to help you address your performance shortcomings, and to find a work environment conducive to your success, it was agreed that:

you will be assigned to EC-07 duties without team supervision under Debra Tattrie in the Performance Management Division from June 10, 2013, to December 10, 2013;

your performance agreement will include clear objectives and achievable, verifiable and measurable performance measures to determine your performance level;

if you wish, a coach's services will continue to be provided to help you improve your competencies;

a training plan tailored to your new duties will be developed in collaboration with your manager, Debra Tattrie, within 30 days of you assuming your new position;

you will receive verbal feedback every 2 weeks and monthly written feedback on your performance level. You will also have a weekly bilateral meeting with your manager throughout the assignment;

if case of unsatisfactory performance in your new duties, at the end of the assignment, we will have no choice but to end your employment;

if your performance is fully satisfactory, you will be placed in an EC-07 position with personnel management duties, and your performance management will continue to help address the remaining shortcomings. You will have a reasonable period in which to achieve this. If successful, your performance plan will be ended. You will return to your substantive position and recover all related duties. However, if unsuccessful, you should be aware that we will have to terminate you for unsatisfactory performance.

...

[199] The letter advised the grievor of her six-month assignment to the Performance Management Division under Ms. Tattrie, with no personnel supervision. The letter stated that in the case of satisfactory performance in the assignment, the grievor would be transferred to an EC-07 position with personnel management duties. In the case of unsatisfactory performance, she would be terminated. In her email to the

grievor of May 24, 2013 (Exhibit E-1, Tab 24), Ms. Nassrallah clarified to the grievor that it was an assignment and not an employment offer. She did not recall discussing it with the grievor because Ms. Kovacs had sent the information to the grievor. Ms. Nassrallah stated that Mr. MacLeod made the decision to assign the grievor so that she would have an opportunity to improve. The six-month length was determined as a trial period. In her email to the grievor of May 17, 2013, Ms. Kovacs pointed out that she and Ms. Nassrallah would be pleased to help the grievor with her job search during the assignment period. Ms. Nassrallah stated that that message was repeated to the grievor several times, in case the assignment did not suit her.

[200] After the assignment letter of June 6, 2013, the grievor wrote to Ms. Nassrallah (Exhibit E-1, Tab 25), challenging certain items in the assignment letter. The grievor also challenged the process that the employer had followed thus far to manage her performance. Although her letter is not dated, she stated that it was June 10, 2013, which the employer did not contest.

[201] In her letter, among other things, the grievor mentioned that while her performance had been criticized, Ms. Nassrallah assigned her duties between late May and the start of June 2013. Ms. Nassrallah acknowledged that it was quite possible that she had worked with the grievor if she was the acting director during Ms. Kovacs' absence. I note that according to the May 14, 2013, work plan prepared by Ms. Kovacs, she was absent on May 8, 9, and 13, 2013. No evidence showed that Ms. Kovacs was absent between late May and the start of June or that the grievor had been the acting director during that period.

[202] Ms. Nassrallah said that she did not discuss the grievor's letter with her because that was the responsibility of the director, Ms. Kovacs, as she managed the grievor's performance. As for the grievor's request that her performance management file be reviewed by a committee, Ms. Nassrallah stated that she had not responded to it because, in her view, the Management Committee had already seen her file, in accordance with the practice. She testified that she had considered the letter, since Ms. Tattrie's assessment had also considered it. When she was asked whether anyone had responded to the letter, Ms. Nassrallah said that Mr. Béliveau had replied to her by letter on July 23, 2013 (Exhibit E-9). She was aware of that reply letter before it was sent, as she had discussed it with him. According to Ms. Nassrallah, the letter reminded the grievor that she had to make an effort to improve her performance. As

Mr. Béliveau assumed his duties in early June 2013, Ms. Nassrallah was to speak with him about the steps to be taken with respect to the grievor.

[203] In cross-examination, Ms. Nassrallah was referred to her approval of the grievor's appointment as the director on an acting basis, replacing Ms. Lehouillier, from March 12 to 16, 2012 (Exhibit S-19). When she was asked whether that meant that the grievor had been performing well in her job, Ms. Nassrallah replied that that was not necessarily the case. As for the question of whether the grievor had properly performed her acting role, she said that she did not remember. With respect to her approval of the grievor's appointment as the director on an acting basis for July 3 to 20, 2012 (Exhibit S-2), Ms. Nassrallah was referred to her email to the grievor and Ms. Lehouillier of July 23, 2012 (Exhibit S-20), in which she wrote, "[translation] Shirley, thank you for taking over. The team and I were well supported."

[204] When she was referred to Ms. Lehouillier's email to Ms. Guilhem of April 11, 2013 (Exhibit S-9), which indicated a meeting held that day involving Ms. Nassrallah, Ms. Lehouillier, and Ms. Coghlan, Ms. Nassrallah acknowledged that the email indicated exactly that. To the question of whether she held individual meetings with the other Public Service Employee Survey team employees in the same period, she said that she did not remember specific dates.

[205] Ms. Nassrallah's email to Ms. Guilhem of April 19, 2013 (Exhibit S-21), indicated that the grievor had seen her that day to confirm that the grievor had sent her an email and to ask for her support. Ms. Nassrallah believed that the grievor was referring to the email that she had received from the grievor on April 18, 2013, about Ms. Lehouillier's work plan and actions (Exhibit E-12). Ms. Nassrallah confirmed that she did not meet with the grievor after her discussions with Ms. Lehouillier, Ms. Kovacs, or Mr. Béliveau because the grievor was already aware of the problems.

[206] Ms. Nassrallah said that the purpose of her discussions with the Public Service Employee Survey team employees was to gather their perspectives on the work environment in terms of what worked well and what did not and whether they faced obstacles in progressing in their files. The tone of the discussions was neutral. According to Ms. Nassrallah, the grievor's performance was not the subject of the discussions with the employees on the Public Service Employee Survey team. Ms. Nassrallah said that it was quite common to seek employees' views.

[207] When she was asked why she excluded the grievor from the discussions, Ms. Nassrallah replied that the assessment of her performance had already been discussed in detail and that management assigned the grievor to another position as part of looking for a job better suited to her competencies. When she was asked why she had not met with the grievor if the process had been done in good faith, Ms. Nassrallah replied that the grievor had been subjected to a performance management plan and that she did not want to change it. In addition, Ms. Nassrallah stated that discussions with the grievor about the performance management plan were taking place with her director, who provided specific feedback.

[208] Ms. Nassrallah was referred to the grievor's email to her of April 12, 2013 (Exhibit S-22), which was the day they met about her performance evaluation and the performance management process. Among other things, the grievor wrote that she had not received a response to her letter dated November 22, 2012, in which she requested that the "[translation] ... criteria of the work plan be clearer, measurable, attainable, relevant, and delimited in time and to have a better mutual understanding of the work plan's objectives and expectations". Ms. Nassrallah stated that she did not remember if she had met with the grievor before that day. She was then referred to the grievor's email to her of April 18, 2013, about Ms. Lehouillier's work plan and actions (Exhibit E-12), in which the grievor referred to her meeting with Ms. Nassrallah on April 12, which mentioned the following:

[Translation]

...

3. In response to my assertion that [Ms. Lehouillier's] actions were in my view contrary to public service values and ethics, you confirmed that it was part of your responsibilities and that to ensure that work interactions respect values and ethics, you would review the file and get back to me about it the middle of the next week.

...

[209] When she was asked why she had not responded to the grievor's email, Ms. Nassrallah stated that she had not committed to reviewing the grievor's file and that the Management Committee considered that the performance management plan was proceeding as it should. When she was told that she had not met with the grievor, Ms. Nassrallah replied that the members of the Public Service Employee Survey team complained about her. When she was asked how she knew that the performance

management plan was being conducted in accordance with public service values and ethics, Ms. Nassrallah replied that she knew it. She also did not feel it was necessary to meet with the grievor before reaching a conclusion. When she was questioned as to whether it was normal to reach a conclusion without obtaining the versions of all parties, Ms. Nassrallah stated that Ms. Lehouillier, Ms. Kovacs, Ms. Tattrie, and Mr. Béliveau had carried out the evaluation and that it had not been limited to one incident.

[210] When Ms. Nassrallah was reminded that the grievor had written to her four times, on April 12, 18, and 19, 2013 (Exhibits S-22, E-12, and E-13, respectively), and on June 10, 2013 (Exhibit E-1, Tab 25), and that she had never replied in writing, Ms. Nassrallah stated that she could not review the details of the grievor's daily work as it was being done.

[211] When she was asked whether the decision to assign the grievor had been unilateral and non-negotiable, Ms. Nassrallah stated that the Management Committee had made it in good faith to improve her performance by distancing her from the problematic workplace.

[212] Ms. Nassrallah was referred to the grievor's email to her of May 21, 2013 (Exhibit E-1, Tab 24), in which the grievor asked if she was to return to her substantive position after the assignment. Ms. Nassrallah stated that it was a possibility, depending on the results of the performance management plan.

[213] With respect to the June 6, 2013, letter setting out the terms and conditions of the grievor's assignment (Exhibit E-1, Tab 24), Ms. Nassrallah was asked whether she had followed up on the terms and conditions mentioned, including the performance agreement, the targeted training plan, and verbal feedback every two weeks. Ms. Nassrallah replied that Ms. Tattrie was responsible for the terms and conditions of the assignment.

[214] In re-examination, Ms. Nassrallah stated that the grievor's assignment had been Mr. MacLeod's initiative, as Ms. Tattrie reported to him.

6. Ms. Coghlan

[215] Ms. Coghlan was an analyst, performance measurement and monitoring, classified at the EC-05 group and level, from 2012. She worked in the same group from 2002 to 2007. In July 2014, she became a senior analyst (EC-06).

[216] From March 2012 to June 2013, Ms. Coghlan reported to the grievor. Ms. Coghlan's responsibilities were to analyze the results of the 2011 Public Service Employee Survey for Statistics Canada. She was to identify key results, analyze correlations, prepare reports, and make presentations to senior management and stakeholders. Senior management and the public sent many requests for information about the results. She then had to prepare the 2014 survey, including holding consultations to prepare the questions.

[217] At first, according to Ms. Coghlan, things went relatively well with the grievor. She found that the grievor did not have much experience analyzing qualitative data and believed that it was a learning curve. Ms. Coghlan provided examples of her interactions with the grievor.

[218] Ms. Coghlan stated that she worked Tuesdays to Thursdays. One day, the grievor called her at home to ask for her help to find some information in the database. Ms. Coghlan explained that the information was not in the database since the team had already published it on their website. She then helped the grievor access the information in question.

[219] Ms. Coghlan also mentioned that the grievor was aware that the Public Service Employee Survey team had demographic data. One Friday, a request for that type of data arrived, and the grievor responded by email that the team did not have it. Ms. Coghlan noticed it when she returned to work. Ms. Malizia, a colleague, had corrected the error, as indicated in the grievor's email to her of September 7, 2012 (Exhibit E-15).

[220] Ms. Coghlan prepared a series of reports about the Public Service Employee Survey. The draft reports were completed in summer 2012. She asked the grievor for her comments. A few weeks later, in an informal discussion, Ms. Lehouillier asked Ms. Coghlan how the drafts were going. When Ms. Coghlan informed her of it, Ms. Lehouillier asked her to share them with her and called a meeting with the grievor and Ms. Coghlan. At the meeting, the grievor said that she did not understand the approach

used in the reports and that if she did not understand it, neither would the Canadian public. Ms. Lehouillier told Ms. Coghlan to continue with the same approach. Due to the delay, the reports were not published on the website until winter 2013.

[221] Another example Ms. Coghlan provided was a request for a statistical analysis after the 2011 survey. The analyst who had done the analysis no longer worked at Statistics Canada. The analysis had to be interpreted, and the reports had to be prepared. Statistics Canada had contracted a consultant to perform these tasks. Not long after that, Ms. Coghlan found that the validity of the statistical analysis was problematic. She stated she had enough knowledge to know that something was wrong. She mentioned it to the grievor several times, who replied that she should let the professionals do it. Ms. Coghlan continued to express her doubts and spoke to Ms. Lehouillier about it. Ms. Coghlan asked her if it would be appropriate to contact the former Statistics Canada analyst for comment and to discuss the interpretation. Ms. Lehouillier agreed. According to the analyst, the interpretation was incorrect and did not express the intent. Ms. Coghlan informed the grievor and suggested that they consult Ms. Lehouillier, since the project was at risk and since it was essential that Statistics Canada be made aware of the disagreement between the analysts. The grievor replied in the negative and stated that they had to wait until the next meeting with Statistics Canada.

[222] Nevertheless, Ms. Coghlan consulted Ms. Lehouillier, who immediately emailed Statistics Canada to note the disagreement. Statistics Canada and the entire Public Service Employee Survey team, including the grievor, shared a meeting. The Statistics Canada employee who had dealt with the consultant reacted very strongly. Statistics Canada did not want to approve the consultant's interpretation, so no report was published. According to Ms. Coghlan, Ms. Lehouillier told her that she had done well because no incorrect reports had been published. However, in her May-June 2013 performance management and learning report, the grievor reproached her for calling the Statistics Canada analyst and undermining relationships with that organization. Senior management then reviewed the evaluation.

[223] Ms. Coghlan stated that repeatedly, she helped the grievor prepare emails, specifically information requests made after the Public Service Employee Survey results were published. Those times, she stayed with the grievor to help her formulate the emails.

[224] When Ms. Coghlan disagreed with the grievor about professional operations, she mentioned it.

[225] Ms. Coghlan stated that she had spoken with Ms. Lehouillier about her problems with the grievor. Ms. Coghlan did not think that the situation would resolve itself and believed that as the director, Ms. Lehouillier should be informed of events. She stated that Ms. Lehouillier took her comments seriously and that after a meeting, Ms. Lehouillier emailed her a summary of it to confirm what Ms. Coghlan had told her. On that matter, Ms. Coghlan cited Ms. Lehouillier's email of December 31, 2012, and her response of January 16, 2013 (Exhibit E-14). In her email, Ms. Lehouillier wrote that she would appreciate more examples of Ms. Coghlan's interactions with the grievor.

[226] From January 2013, the grievor learned that Ms. Coghlan spoke with Ms. Lehouillier. In a conversation with Ms. Coghlan, the grievor told her that if she had problems, they should be discussed with the grievor first, in accordance with the hierarchy. Ms. Coghlan felt uncomfortable and was under the impression that she did not respond because she could not respect that commitment and felt that she was entitled to speak to Ms. Lehouillier. After their first meeting, Ms. Lehouillier told her that Ms. Lehouillier's door was open for discussion. Ms. Coghlan stated that in terms of work, she respected the hierarchy. She stated that she was very unhappy with the situation; she had been ready to change jobs.

[227] Ms. Coghlan was then referred to her email exchange with Ms. Lehouillier of March 28, 2013 (Exhibit E-16, which in short is identical to Exhibit S-6). The first email, which Ms. Coghlan sent at 2:26 p.m., reads, "Do you want more examples?" Ms. Lehouillier's response, at 2:30 p.m., was just one word, in capital letters: "YES!" At 2:37 p.m., Ms. Coghlan forwarded an email to Ms. Lehouillier that the grievor had sent her that day at 1:30 p.m. about a comparison between the number of questions in the 2011 and 2014 surveys. After criticizing the grievor's work, Ms. Coghlan added that she did not believe that it was reliable. The grievor had asked her to verify data that Ms. Coghlan had personally compiled for a presentation about the number of questions related to each theme in the 2011 and 2014 surveys. In her undated email reply to the grievor, Ms. Coghlan informed her that questions that had been removed or modified also had to be considered and indicated in red the details to correct. Ms. Coghlan did not recall whether Ms. Lehouillier responded to her email.

[228] Ms. Coghlan mentioned her email exchange with Ms. Lehouillier of June 5, 2013 (Exhibit E-17, which is the unredacted version of Exhibit S-7). In it, Ms. Coghlan asked Ms. Lehouillier what she should do with her performance management and learning report prepared by the grievor, with which she disagreed. Specifically, she disagreed with the negative comments on the structural equation modelling incident and the reaction of the Statistics Canada employee who had dealt with a consultant. The report also noted that Ms. Coghlan played a role in the fact that the Public Service Employee Survey team was dysfunctional and that she did not act constructively with her supervisor. Ms. Coghlan spoke to the grievor and Ms. Kovacs about it. The grievor reviewed the report. The comments about the Statistics Canada employee's reaction were removed, but those about the structural equation modelling incident were retained. Ms. Coghlan did not sign the report. Ms. Lehouillier eventually rewrote her performance management and learning report, and the structural equation modelling incident was noted as positive for the organization.

[229] When she was asked whether she had spoken to the grievor about the comment that she did not act constructively with her supervisor, Ms. Coghlan did not respond. She stated that her performance management and learning report mentioned that she had to follow the hierarchy. As for the comment on her role in a dysfunctional team, Ms. Coghlan acknowledged that things were not going well in the Public Service Employee Survey team and that there were problems. One colleague had performance problems, as did another colleague.

[230] Ms. Coghlan stated that in summer 2012, she had written eight or nine reports from the "[translation] Focus" series for the 2011 survey, including "[translation] Focus on Employee Engagement" (Exhibit E-18) and "[translation] Focus on Innovation" (Exhibit E-19). However, the reports were published only in winter 2013 since the grievor did not review and return them on time.

[231] Ms. Coghlan stated that when she wrote a report, she had no hierarchical supervisor who could give her constructive feedback on the choice of words. There was no one to approve the results, qualitative data, or interpretation.

[232] In cross-examination, Ms. Coghlan expressed disappointment with Ms. Lehouillier's departure since Ms. Lehouillier was the only one familiar with the tense situation in the Public Service Employee Survey team. Ms. Coghlan recalled

meeting with Ms. Nassrallah on April 11, 2013, and discussing the same things she had discussed with Ms. Lehouillier. She told Ms. Nassrallah that she was unhappy, that she had received a job offer from Health Canada, and that she would leave if things did not improve. Ms. Nassrallah told her that the situation was being taken seriously.

[233] Ms. Coghlan was referred to Ms. Lehouillier's email to Ms. Guilhem of April 11, 2013 (Exhibit S-9), which indicated that Ms. Coghlan had asked Ms. Lehouillier to attend the meeting with Ms. Nassrallah. Ms. Coghlan did not recall but said that what was written in the email must be correct. However, she did not receive a copy of it and was unaware of its contents.

[234] When she was asked for her reaction when she heard about the grievor leaving the division, Ms. Coghlan replied that she had been relieved.

7. Ms. Malizia

[235] At the relevant time, Ms. Malizia was an analyst, Governance, Planning, and Policy Sector, Office of the Chief Human Resources Officer, Treasury Board. She was classified at the EC-06 group and level. Between January and March 2012, she was assigned temporarily to the Public Service Employee Survey team to help analyze the survey results due to her experience with past surveys and as a subject-matter expert. During that time, the grievor acted as her quasi-manager in that she managed Ms. Malizia's activities but her leave requests were handled by the manager of her substantive position, Ms. Kovacs.

[236] With respect to the problems she experienced while working with the grievor, Ms. Malizia indicated that when the grievor arrived, no one expected her to have much knowledge of the survey. Ms. Malizia spent much of her time mentoring the grievor. She explained the context and history of the Public Service Employee Survey and the questions and helped her with information requests about it. After returning to her substantive position, she continued to help the grievor answer questions and provided guidance on several aspects of the survey.

[237] Ms. Malizia affirmed that during the first two months of her assignment, she provided coaching to the grievor 60 to 90 minutes per day in her or in the grievor's office. Additionally, she and the grievor exchanged emails to help the grievor. Ms. Malizia indicated that initially, half her day was devoted to helping the grievor. Ms.

Kovacs wanted to help the grievor, all the while being aware that that help hindered Ms. Malizia in her duties.

[238] As an example of the assistance she provided to the grievor once she returned to her substantive position after March 2012, Ms. Malizia first mentioned the Public Service Employee Survey questions, most of which were asked in a positive way. If the response was positive, the result was positive. She then gave the following example of a question asked in a negative way: “[translation] The quality of my work suffers because of lack of stability.” If the response to that question is positive, the result is negative. Ms. Malizia indicated that she had explained this to the grievor several times using words, symbols, and sometimes, mime. She found that the grievor did not understand when she saw the documents she sent her.

[239] As a further example, Ms. Malizia mentioned structural equation modelling, which examines the relationships between results and identifies key questions that predict a result. In this case, the result was employee engagement. Ms. Malizia spent significant time explaining the analysis of structural equation modelling to the grievor, but she was quite sure that the grievor had not understood.

[240] As part of her coaching of the grievor, Ms. Malizia helped her write a large number of emails. The grievor would call Ms. Malizia to her office. Ms. Malizia would stand next to her and dictate part of the email to her. They would often discuss the email beforehand, which took more time. During the first two months of her assignment, every day, Ms. Malizia helped the grievor with her emails. Her help was less frequent after that and after she returned to her substantive position. The emails included communications with Ms. Lehouillier, the assistant deputy minister, internal clients, public inquiries, Statistics Canada, and Treasury Board policy centres.

[241] Ms. Malizia indicated that she always spent between 30 and 60 minutes helping the grievor with her emails. Sometimes, she had to stay beyond her usual departure time, 5:00 p.m., and sometimes until 6:30 or 7:00, even though she told the grievor that she had family responsibilities. In January and February 2012, Ms. Malizia worked during her lunch hours and worked late every evening helping the grievor.

[242] When she was asked why she did so, Ms. Malizia indicated that she believed in the Public Service Employee Survey and that she wanted it to be a success. She added that she believed in the grievor and that she wanted the grievor to succeed. She

indicated that the grievor was a warm person but that she was also emotional. She sometimes showed up in Ms. Malizia's office in tears. Ms. Malizia suggested that the grievor lacked confidence and was insecure. Her instinct was to help the grievor.

[243] The grievor also spoke with Ms. Malizia about the members of the Public Service Employee Survey team. She indicated that one of them was incompetent and that another one was difficult. She indicated that she had told the difficult person that she was "[translation] suffering from premenstrual syndrome". Ms. Malizia was horrified and told the grievor not to say such things, as she could be accused of harassment. The grievor did not agree.

[244] Ms. Malizia indicated that although she had worked with the grievor for only three months, at Ms. Kovacs's invitation, the grievor contributed to Ms. Malizia's performance management and learning report. Ms. Malizia noted that her meeting with the grievor was largely positive, except when the grievor affirmed that Ms. Malizia's emails were very detailed. Ms. Malizia replied that they were detailed because the grievor was new, and she wanted to help the grievor understand. The grievor replied that she was not as stupid as Ms. Malizia thought. Ms. Malizia said that that was not what she had been thinking. She spent the rest of the interview trying to support the grievor, who was in tears. The grievor then asked Ms. Malizia if she wanted to say anything about her, but given her reaction, apparently, Ms. Malizia did not say anything negative. She related these events to Ms. Lehouillier, who had previously been her director.

[245] The grievor participated in the Treasury Board Secretariat's leadership development program, which includes a 360-degree assessment. She asked Ms. Malizia to participate. Ms. Malizia stated that she took the assessment seriously and that she made sure that each comment was constructive criticism, namely, in the way she told the grievor how to improve things. A few of her colleagues were also invited to participate, and their goal was to make it a positive exercise.

[246] Ms. Malizia raised with Ms. Kovacs some of her concerns with the grievor. Ms. Kovacs knew that Ms. Malizia was working with the grievor. She indicated that Ms. Kovacs was kind and that she was aware that Ms. Malizia had the necessary experience to help the grievor. Ms. Kovacs indicated that Ms. Malizia could continue to offer help for a time but that a transition was required, to gradually eliminate the

assistance. According to Ms. Malizia, Ms. Kovacs discussed the matter with Ms. Lehouillier.

[247] Ms. Malizia then commented on her email to Ms. Lehouillier of Monday, October 1, 2012, which had attached a copy of an email from the grievor to Ms. Kovacs and another manager that same day (Exhibit E-1, Tab 18). Ms. Malizia had met with Ms. Lehouillier that same day to complain about the email, and Ms. Lehouillier had asked her to forward it to her. In her email, the grievor wrote that the previous week, Ms. Malizia's requests had monopolized the team for 2.5 person-days, and as a result, she had had difficulty responding quickly to her requests.

[248] Ms. Malizia explained that on the previous Friday, September 28, 2012, she had been responsible for the public service dashboard, which contains demographic data for the public service as a whole and for each department. Some of the data came from the Public Service Employee Survey, while other data came from other contributors. The Public Service Employee Survey team obtains the data and updates the dashboard quarterly. The person responsible for the data must assume that it is accurate. Ms. Malizia asked the grievor to verify that the data accuracy, but the grievor wanted to wait because some members of the Public Service Employee Service team were absent. Ms. Malizia said that she sent seven emails to the grievor and that they met twice in person on the matter. She also told the grievor not to forget the negative responses.

[249] Ms. Malizia referred me to her email exchange with Ms. Kovacs of September 28 and October 1, 2012, about her interactions with the grievor (Exhibit E-20). Ultimately, the data was not verified. Ms. Malizia was frustrated that the grievor did not understand. She felt that she had done the grievor a service since the data was from the Public Service Employee Survey. At one point, the grievor went to Ms. Malizia's office and told her that it was not her responsibility; her tone was harsh. Ms. Malizia replied that she should understand that it was her responsibility as the manager of the Public Service Employee Survey. When the grievor indicated that she did not want to hinder their relationship, Ms. Malizia referred to the grievor's email. The grievor initially denied sending it, but when Ms. Malizia told her that she had seen it, the grievor was upset that Ms. Kovacs had shown it to Ms. Malizia. After Ms. Kovacs had shown her the email, Ms. Malizia went to see Ms. Lehouillier; however, she did not recall their discussion because she had been upset at that time.

[250] Ms. Malizia then referred to a request for demographic results from the Public Service Employee Survey that originated in the information-request mailbox of the People Information Management Automated Request Tracker. The request was for the highest level of education completed. When a question is received in the Tracker mailbox, it is forwarded to the person responsible for the information. Ms. Malizia indicated that in her email to Ms. Coghlan of November 29, 2012 (Exhibit E-15), she stated that two or three requests had arrived for the same information and that the grievor had said that the Public Service Employee Survey team did not have the data, but the information was available on the shared drive. The Public Service Employee Survey code books that Ms. Malizia mentioned in her email contain the frequency of responses to each question in the 2008 and 2011 surveys. Ms. Malizia indicated that in the 2011 survey results (Exhibit 15-B), question L-Q93 dealt with levels of education.

[251] When she was asked if she had ever discussed with the grievor questions about the 2011 Public Service Employee Survey, Ms. Malizia replied that they had discussed only those questions asked in a negative way. She mentioned the results of the 2011 survey, posted on the Treasury Board Secretariat's website (Exhibit E-21), and explained that an affirmative answer to the following questions constituted a negative answer: "I feel that the quality of my work suffers because of ... Constantly changing priorities" (question 18a), "I feel that the quality of my work suffers because of ... Lack of stability in my department or agency" (question 18b), and "I feel that the quality of my work suffers because of ... Too many approval stages" (question 18c). She indicated that she had explained it to the grievor in many ways, even with smiley emoticons.

[252] In cross-examination, Ms. Malizia affirmed that she had been assigned to the Public Service Employee Survey team to help analyze the results, which the grievor did not seem to understand. When she was asked if coaching the grievor had been part of her duties, Ms. Malizia indicated that the preliminary analysis of the survey results had to be done quickly because it had to be posted on the Treasury Board Secretariat's website. Since there was a new manager, she took the initiative to help her, although no manager had asked her to.

[253] When she was asked why after being frustrated with the grievor and working overtime, she did not end the coaching, Ms. Malizia replied that she had pitied the grievor because she was lost. Although Ms. Malizia felt that the grievor should have understood her duties more quickly, she continued to seek Ms. Malizia's help. In

addition, as Ms. Malizia's quasi-manager, the grievor could have ordered Ms. Malizia to help her. Ms. Malizia informed Ms. Kovacs of the situation after March 2012. Ms. Malizia could have told the grievor about ending the coaching, but it would not have been collaborative.

[254] As for the emails, Ms. Malizia asked the grievor why she could not write them in her own office, to which the grievor responded, to stay close to her. The grievor felt that it was part of Ms. Malizia's duties, but Ms. Malizia was not copied on any of the emails, even though they were her words and instructions. She continued to help the grievor because she does what her managers ask of her. Ms. Malizia indicated that the situation continued for a very long time and that she felt that after two months, the grievor could write her own emails. Ms. Malizia emphasized that it would be simplistic to say that she chose to continue helping the grievor, and she reiterated that the grievor arrived in her office in tears and asked her to help because the grievor did not understand.

[255] Ms. Malizia indicated that she never asked to be paid for the overtime she worked. Generally, she would stop by the grievor's office to say goodbye when she would leave work, and the grievor would tell her that something was urgent. Other times, the grievor would go to Ms. Malizia's office and tell her that a task had to be completed before leaving. Ms. Malizia affirmed that it happened very often. When she was asked whether she told the grievor that she could not work overtime, Ms. Malizia indicated that she told the grievor that she had to take care of a family member and that the grievor replied that she too had family responsibilities. When she was asked whether she had complained to a union representative, Ms. Malizia replied that she had not but added that she had informed Ms. Kovacs.

8. Mr. MacLeod

[256] Mr. MacLeod was Assistant Deputy Minister, Governance, Planning, and Policy Sector, Office of the Chief Human Resources Officer, Treasury Board, from March 2010 to October 30, 2014. Therefore, he was responsible for human resources and management policies for the Government of Canada. His responsibilities included modernizing human resources practices, values and ethics integrity in the federal public sector, and official languages practices in the federal public sector, including courts, Crown corporations, and government agencies.

[257] Mr. MacLeod affirmed that he terminated the grievor's employment because of her ongoing unsatisfactory performance at her group and level, even though her objectives had been clearly stated from the outset and three managers had offered ongoing support, including coaching, training, mentoring opportunities, and the review of two assignments that management felt were better suited for her, one of which was denied. The grievor's last assignment was an opportunity to carry out her duties without having staff to supervise and to work with a different manager and in a different area.

[258] As for the clarity of the objectives communicated to the grievor, Mr. MacLeod indicated that as part of the performance management process at the Treasury Board Secretariat, all employees were subject to a performance management agreement (PMA) setting out the objectives for the year. For the grievor, the stated objectives were deemed appropriate for her group and level. He stated that the Treasury Board was the largest employer of the EC group and that his EC group was the largest at the Treasury Board. After the first semi-annual review of the grievor's performance, more details were added to the regular work plan.

[259] As for how he could know that the objectives had been clearly communicated to the grievor, Mr. MacLeod indicated that a process was in place to review the performance of all executives to ensure that feedback provided to employees was reasonable and appropriate in the context of the Treasury Board Secretariat sector as a whole. The entire management team had the opportunity to review the provided comments. In the grievor's case, Mr. MacLeod knew well the three supervisors who provided feedback, and he felt that they were competent managers who carried out the process well.

[260] The management team consisted of an executive committee. Its size and composition varied, and it comprised four executive directors, a senior director, and six to eight directors. The committee met twice per year to review performance, once in mid-year, and once at the end of the year in April, to review each employee's final ratings. Mr. MacLeod chaired those meetings.

[261] Describing how the executive committee works, Mr. MacLeod stated that the performance results of senior employees, including the grievor, had been provided to all committee members. They reviewed the documents and met two or three times to

ensure that the ratings were reasonable and appropriate relative to each other. The committee also reviewed all issues involving general management in the sector and the policy development program.

[262] Mr. MacLeod considered the grievor's unsatisfactory performance of more than a year before he terminated her employment. Although her supervisors provided her with considerable assistance, there was no resulting improvement. Clearly, feedback had been provided, and he reviewed all relevant documents, which were also discussed at the Management Committee meeting. A significant investment was made in training and mentoring the grievor and in her participation at the National Managers' Community Professional Development Forum. She was also offered assignment opportunities to find a position in which she could be more successful. Mr. MacLeod indicated that sometimes, chemistry problems could arise, so he sought a position that better matched her skills and competencies. He directed a senior director, Ms. Tattrie, to offer the grievor a position to help her succeed at her group and level. As there was no indication that she would achieve the desired results, he decided to terminate her.

[263] The documents on the feedback that Mr. MacLeod reviewed consisted of the performance agreement and Ms. Lehouillier's first communication in 2012. He saw the ongoing work plan that Ms. Lehouillier had prepared, which provided the grievor with specific direction and feedback on her performance against the objectives. He reviewed the documents from the different supervisors and the performance management team. He affirmed that the documents were prepared the same way, that they had entirely clear objectives, and that therefore, the grievor knew exactly what she had to do.

[264] Mr. MacLeod affirmed that the grievor's assignment to Ms. Tattrie arose as part of the review of her performance management, during which where the grievor would be able to succeed was discussed. Ms. Tattrie set up a team to implement the new performance management directive. Mr. MacLeod ordered the assignment to take place. The Management Committee supported that decision as a good opportunity for success as the grievor would work with a new manager in a new area.

[265] Mr. MacLeod was then referred to the portion of the termination letter indicating that the grievor had had the opportunity to comment and provide feedback on the work plans. When he was asked whether he had considered her written comments, he replied that he had as they were in the file. He added that he knew that

the directors had reviewed some of the comments in particular but that it had no impact on his decision. The result was that the grievor's performance had not improved.

[266] Mr. MacLeod affirmed that classification at the EC-07 group and level is superior and that an employee classified at that level is expected to offer a maximum contribution. At that level, the employee is a manager responsible for a file and must have fundamental and authoritative knowledge of the work to be carried out and the ability to work with collaborators across the government. The employee must also fundamentally develop the background of the files being processed. Since at the Treasury Board, as a central agency, the scope, complexity, and impact of the files in Mr. MacLeod's files organization drew the attention of the whole of government at the deputy minister level and even at the ministerial level, expectations were high.

[267] After a related request, Mr. MacLeod clarified the "[translation] Ability/skills" section of the grievor's statement of merit criteria (Exhibit E-22). The first is the "[translation] ability to maintain networks and establish relationships with client departments". He indicated that the person must be able to work with other stakeholders at the Treasury Board Secretariat and with other counterparts. As for the 2014 Public Service Employee Survey, it meant working with high-level colleagues in Human Resources, with service providers, such as Statistics Canada, and with colleagues who were bargaining agents, who commented on the survey.

[268] The second ability is the "[translation] ability to communicate effectively orally and in writing", which means that the person is able to give thorough presentations at meetings, with a high level of competence and understanding. This includes providing advice and authoritative analyses. For example, Mr. MacLeod included collaboration with other departments in implementing the new performance management directive, developing common responses, consulting experts, and synthesizing advice without a supervisor becoming involved. This includes work for virtually any audience, whether a deputy minister, a bargaining agent president, or Mr. MacLeod himself.

[269] The third ability is the "[translation] ability to think analytically". This is a core competency of the EC group and one of the first factors that managers consider when they fill a position in that group. A person with this ability is able to take data,

principles, and research and integrate them into sophisticated products that are both analytically sound and easy to understand.

[270] The fourth ability is the “[translation] ability to work effectively in a team”. Managing a team involves working effectively with employees and ensuring that the required work is carried out. The team’s deliverables must be sound and must stand up to close scrutiny in many forums. This ability also means that the person is able to work with an expanded team of stakeholders from outside the Treasury Board Secretariat, obtain their views, be attentive to their concerns, and weigh their different points of view to create final products that reflect the group consensus and that demonstrate added value through the stakeholders’ input.

[271] The fifth ability is the “[translation] ability to summarize broad and diverse information sets to be able to provide advice”, which means using a variety of sources of information and data to produce results. The individual must review diverse research, data, and best practices from other organizations and translate them into a compelling analysis and advice for executives, such as deputy ministers, assistant deputy ministers, and Human Resources heads.

[272] The final one is the “[translation] ability to organize and supervise work to meet tight and often conflicting deadlines”. Mr. MacLeod indicated that managing the Public Service Employee Survey and implementing the new performance management directive involved clear and hard timelines. In any project, the ability to meet a deadline requires that the person meet most if not all internal deadlines. That is an essential management competency, especially for senior analysts, when leading major projects. For public service employee surveys, not meeting deadlines can have a significant impact. The million-dollar project was approved by the Treasury Board’s president and involved 200 000 employees. Deputy ministers used it to better manage their departments. Operationally, Statistics Canada had a specific period in which to complete it. When a horizontal project is implemented across government, a large number of people from other organizations are involved, and it is important that they receive what they need in time to do their jobs.

[273] Mr. MacLeod was referred to a section of the termination letter that indicated that the grievor’s judgment was problematic. He affirmed that according to the information provided to him, clearly, there were problems with respect to her staff and

to how she organized the work. With respect to the duties assigned to the grievor in the group implementing the new performance management directive, the problem was related to the infrequent consultation of subject-matter experts about the questions. A very rich and experienced resource in this area was not as fully used as it should have been. This presented an obstacle to the initiative's success, as the Office of the Chief Human Resources Officer relies on its own experts and on colleagues from other departments, whose advice is essential to it.

[274] Another problem mentioned in the termination letter was the grievor's ability to understand the components of her work. Mr. MacLeod indicated that this referred to the obligation to work in consultation with the community of experts to prepare documents that could be used, with little intervention by the supervisor, which was not the case with the grievor.

[275] The grievor's communication problem was related to her colleagues in the labour relations field. Their advice was essential. By not communicating with them and by failing to use their expertise, she did not use an important resource. Additionally, the written documents that she submitted required considerable revision.

[276] When he was asked whether he had met the grievor, Mr. MacLeod indicated that he had met with her a few times to discuss the files she was handling as part of the Public Service Employee Survey. He did not meet with her to discuss her performance issues because her managers dealt with them.

[277] In cross-examination, Mr. MacLeod affirmed that he had reviewed the grievor's performance management and learning reports. He was referred to her report for April 1, 2012, to March 31, 2013 (Exhibit S-8), which stated the following for October 1, 2012, to March 31, 2013: "[translation] Over the past six months, Shirley has been able to achieve all her work objectives, despite the fact that her team was rather difficult to manage." When he was asked whether her work objectives had been achieved, Mr. MacLeod replied that the report had two parts for that period and that although they had been achieved, the next paragraph stated that she needed to improve her key management skills. Specifically, she had to improve her communication style and approach in the workplace since they affected her team and colleagues in how the work was delivered and were a source of frustration. That same performance management and learning report stated, "[translation] In addition, the impact often

results in Shirley being perceived as not being able to exercise effective judgment or understand the work itself.” Similarly, although the report indicates that she met four of the objectives in her work plan, she did not meet them all, resulting in an overall rating of “Succeeded -”.

[278] When he was asked whether he had reviewed the grievor’s work plan (Exhibit E-1, Tab 3) before deciding to terminate her, Mr. MacLeod replied that he had reviewed related documents (the nature of which he did not specify) and that he had not been the manager. When he was asked how the work plan could have helped the grievor clarify expectations, he indicated that a number of objectives were set out, including her commitments and the manager’s assignment of duties. Some of the commitments were concrete, such as completing work within deadlines. He indicated that he was not aware of the extent to which the grievor had fulfilled her commitments but that management determined the work to be carried out. However, he added that he had faith in the opinions of Ms. Lehouillier, Ms. Kovacs, and Ms. Tattrie about the grievor’s ability to achieve her work objectives.

[279] Mr. MacLeod stated that he was aware of the training offered to the grievor in the management context, namely, one-on-one mentoring from the Public Service Commission, the Treasury Board Secretariat’s leadership development program, and the National Managers’ Community Professional Development Forum. As the head of that forum, he knew how useful it was and that only 1000 of 40 000 managers had the opportunity to attend.

[280] Mr. MacLeod was then referred to an email exchange that Mr. Béliveau and Ms. Tattrie had on July 22, 2013 (Exhibit S-18), in which Ms. Tattrie affirmed that she did not feel that additional coaching would help the grievor and that her opinion was that the grievor should consider other positions. Mr. MacLeod indicated that he had not read that email before deciding to terminate the grievor but that he was aware that coaching had been offered as discussed at the Management Committee meeting. His view was that the email did not mean that Ms. Tattrie had indicated that no coaching had been offered. As the assistant deputy minister responsible for approving training, he knew from consulting the budget that the grievor had received training. It was a significant investment compared to that of other employees or executives. In addition, the training was provided during the period when the grievor was part of his

organization. He did not know if training or coaching was offered to the grievor after June 2013 as he was not the manager.

[281] Mr. MacLeod was referred to the letter to Ms. Tattrie of June 6, 2013, which set out the terms of the grievor's assignment (Exhibit E-1, Tab 24), including developing a training plan. When he was asked whether he had followed up to ensure that a training plan had truly been developed, he replied that it would be extremely rare for an assistant deputy minister responsible for 200 employees to review a training plan. He added that doing so had been Ms. Tattrie's job. He reiterated that he knew that training had been offered to the grievor and that he would have seen the documents before making his decision. When he was asked whether an employee should be trained before beginning a new assignment, he indicated that only Ms. Tattrie and the grievor could answer that question and that employees do not necessarily receive training immediately on starting a new assignment.

[282] Since the letter also referred to written feedback, Mr. MacLeod was asked whether such feedback had been provided to the grievor. He replied that it had been discussed and that he had been informed that Ms. Tattrie had provided feedback.

[283] Mr. MacLeod was referred to Ms. Tattrie's email to the grievor on November 18, 2013, which indicated that she had attached work plans (Exhibit S-17) that she identified as being from June, July, and September 2013. He affirmed that he was not aware of the email but that he knew that bilateral meetings and written plans had been offered. When he was asked whether it had been important for the grievor to receive the work plans on time, he affirmed that he would have wanted to know that she had received them or that she had had a discussion with Ms. Tattrie.

[284] As for the offer letter for the assignment with the official languages team, Mr. MacLeod indicated that it had been discussed with the grievor but that the assignment did not interest her. When he was asked whether he knew that the grievor had been informed that if she refused the assignment with Ms. Tattrie, she could be terminated, he indicated that the offer had been made in good faith to give her the opportunity to succeed with a competent manager like Ms. Tattrie. The termination letter set out the opportunities that had been made available to the grievor so that she would have a reasonable opportunity to succeed, including training, coaching, and the

two assignment opportunities. To his knowledge, no ultimatum had been given to the grievor indicating that she had to accept the offer or be terminated.

[285] Mr. MacLeod was referred to an email that the grievor wrote to the Chief Human Resources Officer on December 5, 2013, which was forwarded to him on December 8, 2013. In it, she made allegations about a flawed performance management process (Exhibit S-23). He indicated that he did not reply because it involved labour relations, and the Treasury Board Secretariat had a process for that. When he was asked whether it would have been useful to hear what the grievor had to say on the matter, he replied that he did not see a need to meet with her. She had provided sufficient feedback throughout the process, which had been discussed thoroughly with the Management Committee.

[286] In re-examination on the grievor's training and development plan during her assignment with Ms. Tattrie, Mr. MacLeod referred to an undated one-page document entitled, "[translation] Work plan and reporting information per the assignment letter" (Exhibit E-1, Tab 26) and referred me to item 4, which affirmed that the grievor and Ms. Tattrie had agreed that no such plan would be required.

[287] Mr. MacLeod was referred to Ms. Tattrie's email of January 30, 2014 (Exhibit E-1, Tab 28), in which she noted the grievor's concern that the format and content of the work plan template for her position on the Public Service Employee Survey team did not consider her performance and that it was not measurable, specifically with respect to skills and how the work was done. Mr. MacLeod indicated that he was aware of most of the email and affirmed that with respect to performance management across government, it is important to assess not only the work done but also how it was done. Although the argument about whether competencies are measurable is a debate in the framework of performance management, employees are expected to be able to demonstrate the skills required for their positions. Mr. MacLeod was not aware of the disagreement that the grievor and Ms. Tattrie had about the template, but he knew that feedback had been provided to the grievor, verbally and in writing.

9. Ms. Chatterton

[288] Since October 2014, Ms. Chatterton has been a manager with Employment and Social Development Canada (as it is now known). She was previously an analyst/advisor in the Governance, Planning, and Policy Sector, Office of the Chief

Human Resources Officer, Treasury Board, from 2009 to August 2013. During her work on the 2014 Public Service Employee Survey, the grievor was her manager for about a year-and-a-half, until she was replaced by Ms. Kovacs.

[289] Ms. Chatterton encountered several work-related problems with the grievor. She had to spend more time than expected helping the grievor, including showing the grievor some things more than once, which took away time she needed to do her job. She spent significant time in the grievor's office, almost daily, dictating the simple content of the work, such as emails and presentations.

[290] However, when she asked the grievor for help or advice on her work, the grievor would quickly bring the conversation back to being about herself. She would begin to cry, and Ms. Chatterton would console her; therefore, Ms. Chatterton's problem would be quickly forgotten.

[291] Ms. Chatterton was also sometimes insulted by the grievor and did not appreciate her comments. Once, the grievor mentioned that Ms. Chatterton did not smile often enough. Another time, in front of a colleague, the grievor asked Ms. Chatterton what religion she belonged to. The grievor also told her that she was unable to stay after hours because of family obligations, as if it was her fault.

[292] Ms. Chatterton also felt that she could not trust the grievor. Once, she and a colleague asked the grievor for help resolving a problem related to the work of another team member. They told her in all confidentiality that the performance of one of their colleagues did not correspond to the level of the colleague's position and that it affected their work. The grievor emailed the employee, indicating that a complaint had been made about the employee, and copied the other team members. That situation was difficult for Ms. Chatterton.

[293] Ms. Chatterton discussed these issues with the grievor. However, she felt that she was not being listened to. The grievor told her that she was too sensitive. She felt that it was her responsibility to resolve the issue, and the grievor brought the conversation back to being about her. Once Ms. Chatterton concluded that she would not find a solution with the grievor, she consulted Ms. Lehouillier, who offered her advice and suggested how to proceed. Once they were done, Ms. Lehouillier asked Ms. Chatterton to send her a note summarizing their discussion.

[294] Ms. Chatterton was asked to comment on her email to Ms. Lehouillier of January 23, 2013 (Exhibit E-23). In it, she explained in detail how she had spent 1.5 hours the day before dictating to the grievor the content of the 2014 Public Service Employee Survey presentation to the Chief Human Resources Officer (Exhibit E-24). The email was based on a request from Ms. Lehouillier, made in a discussion with Ms. Chatterton, about whether she had contributed to the presentation. When Ms. Chatterton replied that she had, Ms. Lehouillier indicated that that was not what she had understood. Ms. Chatterton affirmed that she had told the grievor the words to write, the order of the presentation, the formatting of the slides, and the way to save the presentation in the electronic data management system, where the team members saved documents every day.

[295] Ms. Chatterton affirmed that the grievor had trouble with a question in the results of the 2014 Public Service Employee Survey (Exhibit E-25). Most questions were asked in a positive way. Thus, when employees agreed, it was usually a positive response. However, question 21a was worded negatively as follows: "I feel that the quality of my work suffers because of ... constantly changing priorities." In this case, when an employee agreed, the positive response meant a negative result. This presented a problem when preparing the presentation, as the grievor needed repeated explanations that for such questions, negative answers should be presented as positive because the question was asked in a negative way.

[296] Ms. Chatterton acknowledged that Ms. Lehouillier had already imposed a disciplinary measure on her in the form of a verbal reprimand. She said that the incident occurred after she had asked for and received advice from her union about what the grievor had done to her. The union informed her that the grievor's comments about Ms. Chatterton's family obligations could be considered discrimination based on family status. She went to the grievor's office to tell her, but the grievor became upset. When Ms. Chatterton left the grievor's office, the grievor followed her down the hallway and asked her to talk to Ms. Lehouillier. When Ms. Chatterton refused, the grievor continued to Ms. Chatterton's office while continuing to insist on it. Later, Ms. Chatterton was called to a meeting with Ms. Lehouillier and the grievor. She was informed that the grievor had told Ms. Lehouillier that she had felt threatened by Ms. Chatterton. Ms. Lehouillier told Ms. Chatterton that the behaviour had to stop. When Ms. Chatterton referred to the grievor's comments about her family obligations, Ms. Lehouillier replied that she would never have made such comments. Ms. Chatterton

then asked the grievor to tell the truth, and she replied, “No comment.” Ms. Chatterton was then called to a disciplinary hearing attended by her union representative, Ms. Lehouillier, and Ms. Guilhem, at which she was given an oral reprimand. She did not challenge the decision because she felt defeated, no one believed her, and she was emotionally exhausted.

[297] Ms. Chatterton indicated that at Ms. Lehouillier’s request, she supervised an employee of the Public Service Employee Survey team in late December 2012. The grievor prepared the employee’s performance management and learning report, and Ms. Chatterton contributed to it. They did not agree on the rating. The grievor felt that he had succeeded, while Ms. Chatterton felt that the rating should have been lower, which was brought to Ms. Lehouillier’s attention, who assigned the performance rating “Did not meet”. Ms. Chatterton thought that it should have been “Succeeded -”.

[298] In cross-examination, with respect to the negative questions in the 2014 Public Service Employee Survey, Ms. Chatterton affirmed that if the employee agreed with them, then that positive response had a negative effect. Ms. Chatterton stated that those same questions were included in the 2011 survey, which the grievor had worked on.

[299] When she was asked whether she had complained regularly to Ms. Lehouillier about the hours she spent helping the grievor in her office, Ms. Chatterton affirmed that they had discussed it and that Ms. Lehouillier had advised her and sometimes had asked her to summarize their discussions in email. When she was asked whether she was aware that the emails she sent to Ms. Lehouillier were being forwarded to a labour relations advisor, Ms. Chatterton did not recall being informed. She had never discussed it with the grievor, although the grievor might have raised it before.

[300] Ms. Chatterton was referred to the notes from the disciplinary hearing that led to the oral reprimand (Exhibit S-24). When she was asked whether she considered herself a problem employee, she denied it.

[301] When she was asked about her reaction when the grievor left the Public Service Employee Survey team in June 2013, Ms. Chatterton replied that she was relieved and that she hoped that the grievor would improve her performance in a different situation. She was very surprised when she was informed of the grievor’s termination.

B. For the grievor

[302] With a master's degree in project management, the grievor was self-employed for 17 years in the international development sector. From 2006 to June 2011, she worked with what is now known as Public Services and Procurement Canada, in its Consulting Services. According to her, during that time, her performance ratings were entirely satisfactory and, twice, were exceptional. When Public Services and Procurement Canada's Consulting Services closed in June 2011, she looked for another job. She accepted the offer from the Office of the Chief Human Resources Officer and began working there on December 12, 2011.

[303] The grievor stated that her relationship with Ms. Lehouillier was good and that they worked well together. The grievor supervised six employees, three indeterminate, and three part-time. She had a difficult relationship with one of the employees, who had held the manager position on an acting basis. The employee wanted to occupy that position. The grievor stated that she and the employee still managed to work together. However, each employee had different behaviour, resulting in different problems. Some did as they pleased, while others did not follow the lines of authority or did not respect authority.

[304] When she replaced Ms. Lehouillier on an acting basis from March 12 to 16, 2012, the grievor said that the team had worked well and that it met all the objectives. When she returned, Ms. Lehouillier told her that she had done a good job. The grievor also replaced Ms. Lehouillier from July 3 to 20, 2012, and everything went well. She even received an email from Ms. Nassrallah thanking her and stating that the team had been well supported (Exhibit S-20).

[305] In the grievor's first performance management and learning report (Exhibit S-1), for December 12, 2011, to March 31, 2012, Ms. Lehouillier noted that she was aware that almost every employee on the Public Service Employee Survey team had performance and behaviour problems and that she wanted the grievor to continue closely monitoring each case. The grievor explained that she had begun meeting with employees once a week and preparing activity reports to achieve the objectives and to set timelines for doing so. She stated that Ms. Lehouillier was pleased and suggested that performance agreements be included and that formal meetings be held three times per year.

[306] The grievor was referred to a document that Ms. Pinto prepared. Ms. Lehouillier received a copy of it on November 1, 2012 (Exhibit S-3). The grievor said that she had read it in April 2014 through an access-to-information request. She was troubled by its contents and found that comments from it had been included in the objectives of the work plan that Ms. Lehouillier gave her on November 2, 2012 (Exhibit E-1, Tab 3). Exhibit S-3 is a three-page document in which Ms. Pinto reported some incidents and indicated that according to her, the grievor showed the following: “[translation] bad judgment; a lack of knowledge; has not demonstrated the ability to learn quickly; delegates activities to employees that should the manager should do; needs to develop her management skills and employee relations”.

[307] The grievor wondered why Ms. Lehouillier had not shown her the document, which she had placed in her personnel file without her knowledge. The grievor made two access-to-information requests. The first was for all documents in her personnel file, which she received in April 2014. She received the documents from the second request in June 2014. Thus, she learned of several emails to Ms. Guilhem asking that documents be placed in her personnel file.

[308] The grievor was advised that she had performance issues for the first time during the mid-year meeting with Ms. Lehouillier on November 2, 2012. She had received the “Succeeded -” rating, even though she had met almost all her objectives. She stated that Ms. Lehouillier slid a work plan across the end of the table to her. She told Ms. Lehouillier that Ms. Lehouillier had never told her that there were any shortcomings or errors in her work. Ms. Lehouillier replied that the employees had complained about her.

[309] The grievor was devastated on finding that Ms. Lehouillier’s email dated November 2, 2012, about the work plan (Exhibit E-1, Tab 3) threatened terminating her as it was the first time that a problem had been brought to her attention. According to her, acting that way was contrary to public service practice because before making such a threat, a performance management program must be implemented. The grievor was not involved in the work plan preparation. Ms. Lehouillier completed it and included the grievor’s objectives and commitments. Ms. Lehouillier also completed the “[translation] results achieved” column based on her observations.

[310] According to the grievor, the objectives in the work plan were not precise, measurable, or attainable. According to her, the objectives had to be clarified; otherwise, she could never achieve them. She sent a detailed email to Ms. Lehouillier on November 22, 2012, with the work plan that included her comments (Exhibit E-1, Tab 6). Among other things, the grievor noted that her performance management and learning report indicated that she had achieved 9 of the 10 objectives set out and that some of the objectives in her work plan lacked precision. Ms. Lehouillier did not reply to that email.

[311] Between November 15, 2012, and March 8, 2013, six work plans were prepared. During that time, Ms. Lehouillier never sat down with the grievor to give her the opportunity to participate in preparing a work plan or to discuss activities to be carried out in the next two weeks or performance measures.

[312] Ms. Lehouillier gave her the first plan on November 22, 2012, not November 15, contrary to what the plan indicated. The 6 work plans were retroactive; Ms. Lehouillier observed and sought comments from other people. The plans consisted solely of criticism and did not provide details or facts as to why the grievor's work was not good. The work plans prepared by Ms. Lehouillier were inadequate. In addition, as Ms. Lehouillier had told her that she would provide her with a work plan every 2 weeks, she should have received 12. Three of the work plans were not submitted to the grievor on the scheduled dates. The work plan ending on November 15, 2012, was given to her on November 22, 2012. The work plan ending on December 7, 2012, was given to her on January 16, 2013, after she returned to work on January 14, and included only one day of direct observation by Ms. Lehouillier due to their respective absences. On that day, Ms. Lehouillier provided her with 2 work plans: 1 ending on December 7, 2012, and 1 ending on January 16, 2013. The work plan ending on January 30, 2013, was given to her on January 31, 2013.

[313] The grievor drafted a document listing her additional achievements (Exhibit E-1, Tab 7) for the purposes of her work plan. In it, she wrote that one of her employees constantly asked the director for advice, thus bypassing the grievor's authority. Ms. Lehouillier informed the grievor that it was Ms. Pinto. Ms. Lehouillier told the grievor that with respect to work, she told Ms. Pinto to speak with the grievor, as she told other employees. However, when it came to personal matters, if an employee wanted to talk to her, Ms. Lehouillier did not refuse.

[314] The grievor was referred to Ms. Lehouillier's email to Ms. Guilhem of April 19, 2013 (Exhibit S-10), which summarized her meeting with the grievor the day before. Ms. Lehouillier wrote that the grievor believed that employees were manipulating both her and Ms. Lehouillier. In her testimony, the grievor stated that she realized that when the employees wanted something, they would go to her, and if she refused, they would go to Ms. Lehouillier, and vice versa.

[315] The grievor was referred to the email exchanges between Ms. Lehouillier and Ms. Coghlan of March 28, 2013 (Exhibit S-6), and June 5, 2013 (Exhibit S-7), in which Ms. Coghlan criticized the grievor's work. She learned of that in April 2014 through an access-to-information request. It surprised her because she did not expect to receive all the documents in her personnel file. She realized that much scheming had been done behind her back.

[316] Through an access-to-information request, the grievor also obtained Ms. Lehouillier's email to Ms. Guilhem of April 11, 2013 (Exhibit S-9), in which she shared her conversations with Ms. Coghlan of April 10 and 11, 2013. According to the grievor, the email contained mocking and disparaging remarks about her.

[317] As for her reaction when she heard of Ms. Lehouillier's departure, the grievor told herself that she would have a chance to start over with a new director.

[318] Ms. Kovacs supervised the grievor from April 22 to June 10, 2013. However, according to the grievor, due to their respective absences, Ms. Kovacs supervised her for only 12 days.

[319] On May 15, 2013, Ms. Kovacs gave her the work plan for April 22 to May 14, 2013. The grievor was dumbfounded. She had received the last plan from Ms. Lehouillier on March 8, 2013. Ms. Kovacs gave her the work plan 8.5 weeks later without even warning that she would be subjected to a performance management monitoring plan. Ms. Kovacs never spoke to her about clear, precise, and measurable objectives. She had used Ms. Lehouillier's model literally and reported criticism and hearsay from other employees. I note that objective 5 (deliver work items within the agreed time) was replaced with "[translation] Improve informal reporting". In both cases, among other things, the grievor was required to provide updates. In any event, Ms. Kovacs' comment for this objective was that the grievor had provided the relevant updates. She wrote the grievor's commitments in the "employee" column. The grievor

stated that the plan covered only 8 days of observation by Ms. Kovacs because of their respective absences.

[320] The grievor stated she sent 5 emails in 10 days to Ms. Nassrallah. The first response she received to them was a letter dated June 6, 2013, about a recovery plan and the terms and conditions of her assignment with Ms. Tattrie (Exhibit E-1, Tab 24).

[321] The grievor was happy with her assignment with Ms. Tattrie as of June 10, 2013. It was a new team and an opportunity for a new start. She was ready to accept the terms and conditions of the assignment to the extent that the criteria were followed.

[322] The grievor met with Ms. Tattrie on June 11, 2013, who told her that nothing had been prepared for her arrival, that Ms. Tattrie was to go on leave, and that they would talk about her work when she returned. In the meantime, the grievor had to clean up her former office. Ms. Tattrie told her to introduce herself to her new colleagues and see if they needed help.

[323] As for Ms. Tattrie's work plan, the grievor stated that she received no written feedback between June 10 and October 22, 2013. On October 22, 2013, she received three action plans on the same day, when she should have received one per month, or four work plans for that period. She never received any other work plans from Ms. Tattrie.

[324] On November 14, 2013, the grievor wrote a letter to Ms. Tattrie (Exhibit S-26) emphasizing that the three work plans were riddled with criticism. The grievor testified that they contained 30 negative comments and that no comments told her how to improve. She received no reply to her letter.

[325] As for the Ms. Tattrie's email exchange with Mr. Béliveau of July 22, 2013, in which she said that additional coaching for the grievor would not be useful and that she should update her résumé to find another job (Exhibit S-18), the grievor stated that she learned about it through her access-to-information request. She then understood that Ms. Tattrie did not want her on her team and that she did not follow the terms and conditions of the assignment letter.

[326] On December 31, 2013, the grievor emailed Mr. Béliveau (Exhibit S-27). Among other things, she told him that on December 6, 2013, she had asked Ms. Tattrie for her

status since her assignment was to end on December 10, 2013, and Ms. Tatttrie had not replied to her about it. She received no reply from Mr. Béliveau.

[327] On December 8, 2013, the grievor emailed Mr. Béliveau and others (Exhibit S-28) asking for a clarification of her status. She received no response to that email.

[328] In an email from Ms. Lehouillier to Ms. Guilhem on March 1, 2013 (Exhibit S-29), which the grievor obtained through an access-to-information request, Ms. Lehouillier proposed removing the grievor's management responsibilities as of April 1, 2013. The grievor stated that Ms. Lehouillier never discussed it with her.

[329] The grievor's access-to-information request also revealed an email that Ms. Guilhem sent to a labour relations advisor on October 30, 2013 (Exhibit S-30), inviting her to a meeting with Ms. Nassrallah that day about the grievor's "[translation] imminent termination".

[330] There were two versions of the termination letter. The first, dated December 9, 2013 (Exhibit E-1, Tab 29), indicated that the termination took effect immediately. That letter was delivered to the grievor while she was on sick leave. In the second version, dated December 16, 2013 (Exhibit E-1, Tab 30), the termination took effect on January 6, 2014.

[331] Part of the termination letter states that management had held meetings with the grievor every two weeks to determine whether the work had been done according to the work plan and that the meetings had been summarized in written reports presented to the grievor. She testified that no written reports were provided to her after those meetings. The work plans included only management comments, which were in the last column.

[332] As for the possibility of being assigned to an AS-06 position, as mentioned in the termination letter, which the grievor refused, she stated that Ms. Kovacs had made the offer barely three weeks after becoming her acting director, on April 22, 2013. At that time, Ms. Kovacs entered the grievor's office and, after closing the door, told her that she had an offer that the grievor had to accept immediately. She added only that the position was under Mr. Tremblay's direction.

[333] The performance management and learning report for the evaluation period of April 1, 2012, to March 31, 2013 (Exhibit S-8), indicates that the grievor's team-

management duties had affected her health and that she was suffering notably from insomnia and fatigue. She stated that she had mentioned it to Ms. Lehouillier. The grievor stated that since the letter of November 2, 2012, she felt pressure and was afraid of losing her job. She had difficulty dealing with the situation as management never responded to her emails and was never straightforward with her.

[334] The grievor was on sick leave from December 12, 2012, to January 12, 2013 (Exhibit S-32). She stated that she consulted her doctor because she had been devastated by the employer's procedure for monitoring her performance management. According to her, the employer did not respond to her emails and did not explain to her the steps to take to improve. She was suffering from anxiety because, in her view, management did not respect public service policies. Her doctor told her that they were out to get her and that that is what would happen if she did not stop.

[335] The grievor returned to work on January 14, 2013. On January 16, 2013, Ms. Lehouillier provided her with two work plans and did not ask her any questions about her health. The grievor wrote to the employer several times about the work plans and mentioned the impact on her health. The plans gave her no chance to improve. She pointed out that no one listened to her, even though she emailed all levels of the hierarchy. However, I note that Ms. Lehouillier responded on April 15, 2013 (Exhibit E-1, Tab 15), to the comments the grievor sent her on April 10, 2013, about the work plans. She added that no one had read the documents and that the process had been flawed. A work plan is a tool designed to improve employee performance. In her performance management and learning report, she met all the objectives set out by Ms. Lehouillier.

[336] As for the testimonies from the employees of the Public Service Employee Survey team, the grievor reacted by pointing out that they continued to hinder and accuse her, including stating that she was not competent, even after she left the position. The grievor stated that it did not match her understanding of performance management.

[337] As for the impact of her termination, she suffered the humiliation of being dismissed because of disparagement by her employees. The circumstances were difficult. Ms. Lehouillier included the hearsay from Ms. Pinto, Ms. Chatterton, and Ms. Coghlan in her work plans. She also included hearsay from Ms. Kovacs, who was then

one of her colleagues. In his letter, Mr. Béliveau told her that if she continued to dispute matters, she would be dismissed immediately. Ms. Lehouillier never sat down with her, and the objectives she set were of a general nature.

[338] In cross-examination, the employer addressed the grievor's testimony that Ms. Lehouillier told her that she had done a good job when she replaced her on an acting basis from March 12 to 16, 2012. The employer suggested that Ms. Lehouillier had instead asked her how it had gone and did not comment when the grievor replied that everything had gone well. The grievor replied that she believed she had done a good job and interpreted Ms. Lehouillier's lack of comment as confirmation that she had done a good job.

[339] The grievor was referred to the fact that she had met with Ms. Lehouillier and that Ms. Lehouillier had proposed formal meetings every three months with the employees the grievor supervised, to discuss their performance. The grievor did not agree. She stated that Ms. Lehouillier had indicated in her performance management and learning report that she had to mentor each person. They agreed that the performance management and learning report would include a quarterly meeting with each person to discuss performance, while normally, those meetings were held twice a year.

[340] The grievor was referred to the fact that according to Ms. Lehouillier, it was understood that not all employees had performance problems and that the purpose of meeting with all of them was to prevent some from feeling targeted. The grievor replied that that was the employer's interpretation and that in fact, she met with all of them every three months. In her performance management and learning report, Ms. Lehouillier stated that each employee had different problems.

[341] With respect to her testimony that before November 2, 2012, Ms. Lehouillier had never informed her of her weaknesses, the grievor replied that she had not received any written notice of her shortcomings or errors. When she was asked whether she acknowledged that before November 2, 2012, she had informal meetings with Ms. Lehouillier about some of the issues with the work that she was to submit to her, the grievor said that she recalled an email she had sent to the entire team about the performance of one of her employees. Ms. Lehouillier had then emailed her, stating that it had been humiliating for the employee and, at a later informal meeting, asked

her to apologize to the employee and to take steps to restore the relationship, which she did.

[342] The grievor and Ms. Lehouillier also met about Ms. Chatterton. After Ms. Chatterton had been disciplined, Ms. Lehouillier called the grievor to her office. While remaining standing, she told the grievor that she had to manage her emotions better.

[343] The grievor stated that she had never had informal meetings with Ms. Lehouillier about her shortcomings, only bilateral meetings about operations.

[344] The grievor was referred to the email that Ms. Lehouillier sent her on October 23, 2012 (Exhibit E-1, Tab 19), indicating that Ms. Kovacs had told her that the grievor had asked her to remove her sandals; she wondered why. After Ms. Kovacs removed her sandals, the grievor told her that she should get a pedicure. The grievor stated that she learned of the email in April 2014, through her access-to-information request. She stated that Ms. Kovacs had greeted her in her office and that it was a private conversation between two women, behind a closed door. She did not understand how it was related to her performance management.

[345] The grievor was referred to her testimony on her email to Ms. Lehouillier of November 22, 2012, which had attached the work plan that included her comments (Exhibit E-1, Tab 6), and to which she said Ms. Lehouillier had not replied in writing. The employer acknowledged that Ms. Lehouillier had not replied in writing. Nevertheless, the grievor was referred to the fact that she had received an oral response. On this matter, the employer mentioned Ms. Lehouillier's email to Ms. Guilhem dated April 19, 2013 (Exhibit E-1, Tab 16), which summarized Ms. Lehouillier's meeting with the grievor that day. It stated as follows:

[Translation]

...

She said that I never replied to her November 22, 2012, email. I replied to her that we had discussed it, to which she replied that she expected a written response. She also said that I did not answer any of her questions about the work plan. I told her that I answered all her questions. She acknowledged it, but I suppose that it was not enough for her.

...

[346] The grievor did not recall that Ms. Lehouillier had answered her questions about the work plan point-by-point in the manner described in her April 19, 2013, email (Exhibit E-1, Tab 16).

[347] As for her testimony that she received only 6 work plans instead of 12, the grievor acknowledged that she was on sick leave from December 12, 2012, to January 12, 2013. The employer informed her that Ms. Lehouillier would testify in rebuttal that the last work plan was the one on March 8, 2013, because after that date, Ms. Lehouillier had gone on leave for a week. On her return, Ms. Lehouillier stopped preparing work plans because she had to prepare performance management and learning reports. The grievor replied that she had no comment on that.

[348] As for the fact that the grievor received two work plans on the same day, January 16, 2013, the employer stated that Ms. Lehouillier would testify that the grievor had been absent on December 6 and 7, 2012, and that she returned only on January 14, 2013. The grievor acknowledged that she was absent on those two days.

[349] The grievor testified that Ms. Tattrie prepared nothing for the grievor's arrival on her team. The employer pointed out that on June 10, 2013, Ms. Tattrie organized a team meeting and that on June 11, 2013, she met with the grievor to discuss her work. The grievor replied that that was Ms. Tattrie's opinion. She reiterated that Ms. Tattrie told her that she had to take the time, during Ms. Tattrie's absence, to meet with each member of the performance management team to determine how she could help. No office had been made ready for her, and Ms. Tattrie told her to close her Public Service Employee Survey files and to clean out her former office.

[350] With respect to the fact that Ms. Tattrie told her that she would provide her with documentation, the grievor replied that Ms. Tattrie had told her that her assistant would send her documentation during the week.

[351] The grievor was referred to her testimony that Ms. Tattrie wanted to get rid of her, given her email to Mr. Béliveau of July 22, 2013, in which she wrote that providing more coaching to the grievor would be of no use and that she should update her résumé and find another job (Exhibit S-18). The grievor stated that she felt that she had not been well received in the performance management team as there was no work for her and no office.

[352] The employer suggested that the grievor wanted to leave the Office of the Chief Human Resources Officer and find employment elsewhere. It also pointed out that management had offered her help updating her résumé as well as coaching to prepare for interviews. She stated that she was under the impression that in her email of May 17, 2013, Ms. Kovacs stated that she, Ms. Nassrallah, and Ms. Tattrie would help the grievor find a job during the period of her assignment. The grievor added that she had not wanted to leave the Public Service Employee Survey team. When the grievor was reminded of Ms. Kovacs' testimony that the grievor had wanted to find a job elsewhere, she said that Ms. Kovacs had left in May and that she had already been offered the assignment with Ms. Tattrie. When the employer reminded the grievor that on April 22, 2013, Ms. Kovacs said that the grievor had told her that she wanted to leave the Office of the Chief Human Resources Officer, the grievor replied that she had still been in shock that month and that the Public Service Employee Survey team wanted her gone, which was why she said she wanted to leave. The position with Ms. Tattrie was offered to her in May.

[353] With respect to the fact that according to Ms. Tattrie, arrangements for job-search coaching had been made for the grievor but she had not followed up on them, she replied that that was contrary to the content of her assignment letter.

[354] The employer told the grievor that although she claimed that she had received only three work plans from Ms. Tattrie instead of six, Ms. Tattrie provided her with all the work plans. The grievor replied that she received only three plans, which she commented on. I note that Ms. Tattrie testified that in her email to the grievor of November 18, 2013 (Exhibit S-17), she attached the work plans for June, July, and September 2013.

C. The employer's reply evidence

1. Ms. Lehouillier

[355] As for March 12 to 16, 2012, when the grievor replaced her on an acting basis, Ms. Lehouillier said that when she returned, she asked the grievor how things had gone, and that the grievor simply told her that everything had gone very well, nothing more.

[356] With respect to the grievor's quarterly meetings with the employees of the Public Service Employee Survey team to discuss their performance, Ms. Lehouillier

explained that some team members had problems. She agreed with the meetings but understood with the grievor that all employees should be met with in the same way, to avoid certain employees feeling targeted and treated unequally.

[357] When she was asked why, over a 24-week period, the grievor received only 6 work plans instead of 12, Ms. Lehouillier stated that she had been absent from November 23 to December 2, 2012, and that she had not disclosed to her replacement that the grievor was being subjected to a work plan. The grievor was absent on December 6 and 7, 2012. On December 12, 2012, Ms. Lehouillier received a doctor's note justifying the grievor's absence from December 12, 2012, to January 12, 2013. When the grievor returned to the office on January 14, 2013, Ms. Lehouillier provided her with the work plan of December 7, 2012. As of January 16, 2013, she again began meeting with the grievor every two weeks. In March 2013, Ms. Lehouillier took a week off and did not share the work plan information with her replacement. She then had to focus on preparing the year-end performance management and learning reports. She had discussions with the grievor but concluded that it would be too demanding for the grievor were she given more work plans.

[358] In cross-examination, when she was asked whether she had informed the grievor that there would be no work plans after March 8, 2013, due to the performance management and learning reports, Ms. Lehouillier did not recall and assumed that the grievor must have known. She felt that that was sufficient because the grievor's performance management and learning report mentioned items that she had to improve.

[359] When she was asked to clarify her comment that continuing to give the grievor work plans would have been going too far, Ms. Lehouillier said that it was a large amount information for one person.

2. Ms. Tattrie

[360] Ms. Tattrie indicated that at a team meeting on June 10, 2013, the grievor was introduced to the performance management team. On June 11, 2013, Ms. Tattrie held a bilateral meeting with the grievor and described to her what she would do. The grievor still had duties to perform in her previous position, including completing performance management and learning reports and cleaning up her office.

[361] When she was asked how she prepared the grievor's transition from her former Public Service Employee Survey team to her new performance management team, Ms. Tattrie replied that the first step was to convene a staff meeting. The second step was to organize a bilateral meeting with the grievor. Ms. Tattrie was to go on leave and had to assign the grievor some duties to perform while she was away. In addition to those already mentioned, she asked the grievor to meet with the employees, to learn what they were doing. The grievor was also to read the project documentation since she would handle the questions and answers, which were timely information to support departments implementing their performance management programs.

[362] When she was asked whether she had asked the grievor to update her résumé and look for another position, Ms. Tattrie replied that during their bilateral meeting about their discussion of the learning plan in early July 2013, they had discussed learning and what Ms. Tattrie thought would be the next steps for the grievor. The grievor agreed to update her résumé, and Ms. Tattrie made arrangements with an external human resources management firm to help the grievor with her résumé and the interview process.

[363] In cross-examination, when she was asked whether there had been office space for the grievor, Ms. Tattrie replied that the entire performance management team was set up as an open concept, with six workstations; the grievor occupied one of those workstations as of June 10, 2013.

[364] When she was asked whether her discussions with the grievor about her new assignment had taken place during their first bilateral meeting, Ms. Tattrie corrected her main testimony by stating that the discussions had taken place in early July 2013, when they discussed the learning plan.

III. Summary of the arguments

A. For the employer

[365] Ms. Lehouillier hired the grievor after she received excellent references and interviewed her to explain the requirements of the position and the challenges she would face. The grievor was responsible for the Public Service Employee Survey and for managing a team of analysts.

[366] The grievor's first performance management and learning report covered December 12, 2011, to March 31, 2012. It was noted that she had adapted well to her new duties and had good working relationships with those around her. In particular, it was noted that she had to meet deadlines and manage the time spent on employees under her supervision. The report was not rated because the grievor had to be given time to adjust and understand the different aspects of the Public Service Employee Survey.

[367] During 2012, Ms. Lehouillier received complaints from some employees under the grievor's supervision, as well as other employees, colleagues, and team supervisors. According to the complaints, the grievor had made inappropriate comments to some employees, did not appear to understand certain concepts of the Public Service Employee Survey for which she was responsible, had judgment and understanding problems, and did not meet the timelines she had set. Ms. Lehouillier noted the employees' complaints and her discussions with the grievor about them in emails to herself, including, for example, one on October 23, 2012 (Exhibit E-1, Tab 19). One part of that email was about the fact that on October 22, 2012, the grievor emailed one of her employees about a document that he had prepared. In the email, which she sent to all her team members and to Ms. Lehouillier, she criticized the employee's performance and told him that he was not up to what was expected of his position (Exhibit E-1, Tab 19). The email referred to the discussions Ms. Lehouillier had had with the employee and the grievor about the incident. In her email, Ms. Lehouillier wrote that by October 2, 2012, she had spoken with the grievor about the need to maintain the confidentiality of her employees' performance issues and not discuss them with others. Ms. Lehouillier also warned the grievor not to make inappropriate comments and provided two examples: when the grievor told an employee on the employee's first day of work, "[translation] Now you know everything, right?" and when the grievor asked Ms. Kovacs to remove her sandals. Ms. Lehouillier testified that she spoke with the grievor about the shortcomings that had been observed.

[368] Referring to certain exhibits, the employer pointed out that the grievor had disclosed some confidential information about some employees to others, including an employee's assessment and the allegation that Ms. Malizia had monopolized the team's time.

[369] The employer addressed the issue of whether Ms. Lehouillier had relied on documents received from employees to prepare the grievor's work plan, including Ms. Pinto's document that was received on November 1, 2012 (Exhibit S-3). The employer pointed out that in cross-examination, Ms. Lehouillier had stated that the work plan had already been prepared when she received that document. She affirmed that she had observed the grievor's shortcomings and had then developed the plan. The work plan had seven objectives; the grievor refused to accept it.

[370] The employer pointed out that when the grievor was under Ms. Tattrie's supervision, she raised concerns about the work plan that Ms. Lehouillier had prepared. Ms. Tattrie suggested to the grievor developing a work plan that could be suitable to both of them. Ms. Tattrie reviewed and made changes to the plan that the grievor prepared. Nevertheless, Ms. Tattrie testified that the grievor was resistant to comments and was defensive.

[371] According to the employer, the evidence established a lack of cooperation by the grievor to improve her performance. Ms. Lehouillier met with her every two weeks to discuss the work plan. At each meeting, she provided concrete examples for each objective to help the grievor improve, including at her meeting with the grievor on January 16, 2013, which she summarized in her email of January 17, 2013 (Exhibit E-1, Tab 11). In the grievor's performance management and learning report for April 1, 2012, to March 31, 2013, Ms. Lehouillier assigned the grievor an overall rating of "Did not meet". After the grievor made some comments, it was changed to "Succeeded -".

[372] Ms. Kovacs replaced Ms. Lehouillier on an acting basis from April 22 to June 9, 2013. Although Ms. Kovacs and the grievor both took leave during that period, Ms. Kovacs stated that she was able to observe certain shortcomings in the grievor's work and that she shared them with the grievor at meetings. The grievor had difficulty managing the team she was to supervise and meeting a deadline to respond to an urgent request. She explained to Ms. Kovacs that the delay was due to her full email inbox.

[373] Ms. Kovacs observed that the grievor had difficulty understanding information she was given. She received comments from employees on the Public Service Employee Survey team indicating that the grievor did not exercise strong leadership that could support them in their work, which affected the Public Service Employee Survey. When

the grievor asked her for management advice, Ms. Kovacs made herself available after hours. She also provided the grievor with documentation that explained how to manage a difficult team.

[374] Ms. Kovacs testified that based on her observations, the grievor did not appear to understand the files assigned to her or the roles of the team members she supervised. She also had difficulty understanding the technical concept of the Public Service Employee Survey and the related terminology.

[375] Ms. Kovacs gave the grievor the necessary support to help her improve. When Ms. Kovacs left the Office of the Chief Human Resources Officer, she contacted the grievor to tell her that she was always available to help her in her job search.

[376] During her assignment under Ms. Tattrie's supervision, the grievor told Ms. Tattrie that she did not agree with the work plan that Ms. Lehouillier had prepared. Ms. Tattrie agreed that the grievor would prepare a work plan that was suitable to them both. The grievor gave her the template only in September 2013.

[377] Beginning in June 2013, Ms. Tattrie met with the grievor weekly and gave her verbal and written feedback on the work that the grievor submitted to her. The written feedback consisted of a series of monthly feedback documents for June 10 to December 10, 2013, which contained Ms. Tattrie's comments based on the bilateral meetings (Exhibit E-1, Tab 27).

[378] In July 2013, the grievor had difficulty performing the assigned duties. Ms. Tattrie then increased the meetings with the grievor to twice a week; each one lasted an hour or more. Ms. Tattrie's comments in the three work plans provided to the grievor in October 2013 had been discussed with the grievor at their meetings.

[379] Ms. Tattrie remarked that the grievor had problems understanding the components of her work. She told the grievor that she was not using the subject-matter experts to prepare the questions and answers on the performance management directive. She testified that the grievor's shortcomings continued throughout the period in which the grievor was under her supervision.

[380] The employer pointed out that it had provided the grievor with ample training, in accordance with the testimonies of Mr. MacLeod, Ms. Nassrallah, and Ms. Lehouillier.

Additionally, when Ms. Lehouillier recommended that the grievor use a mentor, the grievor declined, stating that she did not have time.

[381] The employer referred me to the testimonies of the employees the grievor had supervised on the Public Service Employee Survey team, namely, Mses. Chatterton, Coghlan, and Malizia. According to Ms. Coghlan and Ms. Chatterton, when they needed help or support in their work, they did not receive it from the grievor. Several times, they had to explain the concepts of the Public Service Employee Survey to her, and she did not seem to understand. Ms. Coghlan testified that while she was on leave, the grievor called her at home for information that had already been published and was available to the public. Ms. Coghlan had also prepared a series of analyses, which she provided to the grievor for her comments. After a few weeks of no response, Ms. Lehouillier had to intervene. Those reports were not published on the website until winter 2013. Ms. Malizia remained at the office after hours to help the grievor with tasks she had to accomplish.

[382] Mr. MacLeod testified that the grievor was terminated because her performance remained unsatisfactory. It was not up to what was expected of an employee in a position classified at that group and level, despite the clear objectives communicated to her. The three managers who supervised her provided her with written and verbal feedback. She did not demonstrate any notable improvement that met all performance expectations. Mr. MacLeod took into account the difficulties she faced managing the team she supervised.

[383] As for the issue in question, the employer pointed out that the evidence demonstrated that it had been reasonable for it to consider the grievor's performance unsatisfactory and that the termination was justified under s. 230 of the *FPsLRA*. The performance standards were appropriate and were clearly communicated to the grievor. The employer acted in good faith and wanted her to succeed.

[384] In support of its argument, the employer cited the following decisions: *Raymond v. Treasury Board*, 2010 PSLRB 23; *Plamondon v. Deputy Head (Department of Foreign Affairs and International Trade)*, 2011 PSLRB 90; *Mazerolle v. Deputy Head (Department of Citizenship and Immigration)*, 2012 PSLRB 6; *Reddy v. Office of the Superintendent of Financial Institutions*, 2012 PSLRB 94; *Forner v. Deputy Head (Department of the Environment)*, 2014 PSLRB 95; *Dunsmuir v. New Brunswick*, 2008

SCC 9; *Gagné v. Canadian Food Inspection Agency*, 2016 PSLREB 3; *Burchill v. Canada (Attorney General)*, [1981] 1 F.C. 109 (C.A.); *Gibson v. Treasury Board (Department of Health)*, 2008 PSLRB 68; *Halfacree v. Canada (Attorney General)*, 2014 FC 360 (upheld in 2015 FCA 98); and *Kagimbi v. Canada (Attorney General)*, 2014 FC 400.

B. For the grievor

[385] Under s. 230 of the *FPSLRA*, the Board's authority is limited to determining whether, in the grievor's case, the decision to terminate her was reasonable. The Board's mandate is not to validate or justify whether she was competent or whether she met the position's requirements.

[386] In this case, it is clear that the evidence stems from complaints expressed to Ms. Lehouillier about the grievor. The complaints essentially consist of dissatisfaction mainly from the grievor's employees, whom many witnesses qualified as difficult. The complaints in question do not constitute shortcomings in themselves or breaches of predetermined performance standards.

[387] The grievor's employees testified about their complaints, namely, overtime, an employee's sandals, and the fact that the grievor did not attain a certain level of technical understanding. When complaints are filed against a person, the manager has a minimum moral and legal responsibility to investigate the allegations and to hear the person's version before reaching a conclusion.

[388] Ms. Lehouillier made decisions based on the employees' whims, and the grievor had to manage her employees based on their complaints. She pointed out that ultimately, she was terminated because she had been unable to please her employees' whims. She had no performance problem; it was a way for the employer to achieve its goals.

[389] According to the grievor, it was essentially collusion between a group of people, namely, Ms. Lehouillier, Ms. Kovacs, Ms. Tattrie, Ms. Nassrallah, and Ms. Guilhem and Mr. Béliveau, to get rid of her.

[390] When employees met with Ms. Lehouillier to report even frivolous disappointments, problems, or complaints, she accepted them outright and based her decisions on those complaints, without even speaking with the grievor. According to

the grievor, this is not a case of unsatisfactory performance but of constructive dismissal.

[391] The employer's most important document to justify its position is the performance management and learning report. However, Ms. Lehouillier submitted two unsigned reports and did not recall signing one.

[392] As for the grievor's overall rating for April 1, 2012, to March 31, 2013, the change from "Did not meet" to "Succeeded -" did not take place during the review process but at a discussion between the grievor and Ms. Lehouillier. The grievor had informed Ms. Lehouillier of her work on the OECD file, which was why the rating was changed. Strangely, the file was taken from the grievor while she was working on it. I note that in her email to Ms. Guilhem of April 19, 2013 (Exhibit S-10), Ms. Lehouillier indicated that she would add the grievor's work on the OECD file to her performance management and learning report.

[393] The grievor argued that her performance management and learning report indicated that for October 1, 2012, to March 31, 2013, she successfully completed all her work objectives, despite the fact that she had a difficult team to manage. During that period, she was subjected to a work plan.

[394] Although the performance management and learning report indicated that the grievor had received several training opportunities, she emphasized that one occurred before management identified her performance problems. For instance, the National Managers' Community Professional Development Forum in Winnipeg was held in May 2012 (Exhibit E-11), and the Treasury Board Secretariat's leadership development program was held at the same time (Exhibit E-10). I note that in fact, the grievor undertook the leadership program in November 2012 (Exhibit S-8).

[395] The grievor pointed out that the work plan is a management or communication tool between a manager and an employee that the manager must necessarily prepare. It must include the items to be improved and the commitments of the employer and employee. It must also detail the performance standards that the employee must achieve within a reasonable time. According to the grievor, the work plan is designed to meet the criteria set out in *Raymond*.

[396] In this case, on November 2, 2012, the grievor received an email from Ms. Lehouillier, including a work plan that she had already prepared. Ms. Lehouillier and the grievor neither consulted nor had an exchange about preparing the work plan. Ms. Lehouillier even wrote the grievor's commitments, which was nonsense. The grievor told her that the objectives were vague and that they could not be met.

[397] As for performance standards, Ms. Lehouillier told the grievor that they would be set based on Ms. Lehouillier's observations. Therefore, there was no predetermined performance standard. The grievor questioned how an employee could meet performance standards to be determined based on observations. The grievor had no way of clearly knowing what was expected of her.

[398] For each action plan discussed with the grievor between November 2, 2012, and March 8, 2013, the "results achieved" column consisted of criticisms, complaints, or dissatisfaction reported to Ms. Lehouillier. Ms. Lehouillier's observations were in fact those of other people. When Ms. Lehouillier did not receive a complaint against the grievor, she wrote in the work plan, "[translation] Nothing special to report."

[399] The grievor wrote to Ms. Lehouillier several times to express her feelings about the process. What the employer characterized as a challenge was in reality a legitimate request by the grievor to obtain a minimum of information, which she needed to respond to the allegations against her. It was impossible for the grievor to know her shortcomings because Ms. Lehouillier's allegations varied based on the complaints she received.

[400] Additionally, since the shortcomings were retroactive, how could she improve when she was being criticized for what had already happened? To demonstrate that an employee has met performance standards, the *Raymond* criteria must be applied. The employer must provide a reasonable time for the employee to demonstrate that the established performance standards have been met. The December 7, 2012, work plan was given to the grievor on January 16, 2013. Was it reasonable to ask the employee to meet the objectives for the period ending December 7?

[401] Through an access-to-information request, the grievor learned that on November 1, 2012, Ms. Pinto sent Ms. Lehouillier a complaint about the grievor (Exhibit S-3). The complaint contained seven claims that were found word-for-word in the work plan. All this was done without the grievor's knowledge.

[402] The grievor's performance was assessed based not on unmet objectives but on her employees' complaints. Their emails to Ms. Lehouillier were forwarded to Labour Relations. In them, they used Ms. Lehouillier, or vice versa, as part of managing the grievor's performance. On reviewing the evidence, I noted that once, on January 23, 2013, Ms. Lehouillier forwarded an email to Ms. Guilhem that Ms. Coghlan had sent her that day (Exhibit E-1, Tab 22). Attached to it was an email from the grievor of September 7, 2012, and one addressed to Ms. Coghlan of November 29, 2012. In her email to Ms. Lehouillier, Ms. Coghlan stated that she had cleaned up her emails and that the attached emails reminded her that she had had to provide the grievor with the same information four times in three months and that each time, the grievor had asked her if their team had the information. A manager must treat employees with dignity and respect. In an email she sent to Ms. Coghlan on June 5, 2013 (Exhibit E-17), after she had already left the employer for other duties, Ms. Lehouillier wrote the following about the grievor: "[Translation] OMG! She does not understand!" According to the grievor, it constituted bad faith.

[403] With respect to Ms. Kovacs, her actual observation period between April 19 and June 10, 2013, was only 12 working days. Ms. Kovacs prepared a work plan for the grievor after only 8 days of observation. With so little observation, how was it possible to conclude that the grievor did not meet the requirements of her position?

[404] When she was assigned to work under Ms. Tattrie, the assignment letter indicated that Ms. Tattrie was to prepare a training plan, but the grievor never received one. From Ms. Tattrie's email to Mr. Béliveau of July 22, 2013 (Exhibit S-18), it is clear that she was not interested in preparing one.

[405] Ms. Tattrie was not interested in the grievor. Although she was to prepare a work plan every month, the evidence showed that the grievor received only three, all on October 22, 2013, 132 days after she began her job. In a message dated November 14, 2013, the grievor expressed her concerns, including the long delay receiving feedback from her manager.

[406] In an email Ms. Guilhem sent to a labour relations advisor on October 30, 2013 (Exhibit S-30), eight days after the grievor was given the work plans, she referred to the grievor's "[translation] imminent termination".

[407] The grievor pointed out that under *Raymond*, if the employer's assessment is not reasonable, then the termination decision must be overturned. At paragraph 128 of *Raymond*, the adjudicator considered as follows the definition of "reasonableness" in matters judicially reviewed in *Dunsmuir*:

[128] The concept of "reasonableness" within the meaning understood by the Supreme Court in matters of judicial review may also be useful and, on that note, I will reiterate as follows the definition in Dunsmuir:

...

[47] ... reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

...

[408] As for the justification of the decision, the grievor pointed out that the employer submitted no evidence establishing that she had been unable to comply with clear and well-defined standards within a specified time.

[409] As for the transparency and intelligibility of the decision-making process, the grievor argued that at no time was she was informed or consulted during the performance management process; nor did she receive any answers to her questions. Only in April 2014, after she made her access-to-information request, was she was able to note management's collusion.

[410] The fact that Ms. Lehouillier used employees to develop her system for managing the grievor's performance went contrary to the principle that the decision had to fall within a range of possible, acceptable outcomes that are defensible with respect to the facts and law. The grievor pointed out that by asking for examples from the employees on the Public Service Employee Survey team or by accepting the examples provided to her, Ms. Lehouillier avoided her obligations.

[411] The grievor pointed out that the finding of unsatisfactory performance against her was unreasonable and that none of the four *Raymond* criteria was met. She pointed out that in short, the employer engaged in a bad-faith exercise from the start. The performance standards were inappropriate, and the employer never clearly communicated to her the standards she had to meet. She never received the tools,

training, or mentoring required to meet the performance standards within a reasonable time.

[412] The grievor asked that the employer's decision to terminate her employment be overturned and that she be reinstated into her position or into an equivalent position at the EC-07 group and level with compensation and benefits at the Bank of Canada's prescribed interest rate, retroactive to her termination date.

[413] The grievor cited *Tipple v. Deputy Head (Department of Public Works and Government Services)*, 2009 PSLRB 110 ("*Tipple 2009*"), in support of her request for moral damages. She mentioned the impact of the performance management process on her health and the fact that Ms. Lehouillier had noted it (see Exhibits S-8 and S-11). The grievor submitted that when an employee has a health problem, management has a moral obligation to ask if the employee needs help. She argued that I can assess the weight of the doctor's opinion in the July 25, 2015, medical note (Exhibit S-34). Furthermore, going to work every day and being criticized becomes humiliating. The grievor was declared unfit for work before being terminated. For one year, Ms. Lehouillier had the opportunity to end the process she had begun. She could have told the employees to stop their complaints. It constituted harassment. Therefore, the grievor requested moral damages of \$300 000.

[414] The grievor also requested exemplary damages of \$150 000. She argued that nothing could justify the employer's actions; it is a central agency of the federal government. The Office of the Chief Human Resources Officer is responsible for developing and implementing policies that prevent such behaviour in departments. Additionally, this sector was responsible for designing the new performance management system for the public service.

[415] The grievor argued that her assignment to the performance management team was a sham and that she could not have been terminated while on assignment. The purpose of a temporary assignment is to acquire new knowledge. She should have first been reinstated to her substantive position as the manager of the Public Service Employee Survey team.

[416] In support of her arguments, the grievor cited the following decisions: *Nnagbo v. Treasury Board (Public Works and Government Services Canada)*, 2001 PSSRB 1;

Raymond; *Tipple 2009*; *Tipple v. Canada (Attorney General)*, 2012 FCA 158; and *Wallace v. United Grain Growers Ltd.*, [1997] 3 SCR 701.

C. The employer's rebuttal

[417] On the grievor's allegation that her termination constituted a constructive dismissal, the employer emphasized that her grievance was referred to adjudication under s. 209(1)(c) of the *FPSLRA*. This is a new allegation aimed at transforming the grievance; therefore, I cannot consider it (see *Burchill*).

[418] As for the doctor's note of July 25, 2015 (Exhibit S-34), the employer agreed to it being entered on the understanding that it would not be used and only because the grievor insisted that it be entered. The employer argued that it should be given no weight.

[419] With respect to the grievor's argument that the work plans prepared by Ms. Lehouillier and Ms. Kovacs were based on the employees' grievances and claims, the employer emphasized that three of those employees testified about the shortcomings that they observed in the grievor. The grievor's work required significant revision, and managers often had to redo it. The employer's witnesses presented concrete examples, and that evidence was not contradicted.

[420] The employer strongly denied the allegation of a conspiracy involving Labour Relations, the role of which was to help and advise management. In this case, management sought advice from Labour Relations, and the emails that management and Ms. Guilhem exchanged, which the grievor submitted, were largely redacted. The employer asked that no weight be given to this argument.

[421] As for the OECD project, the employer emphasized that Ms. Lehouillier testified that she had assumed responsibility for it, to allow the grievor to focus on her role as the manager of the Public Service Employee Survey.

[422] As for training tools, the employer emphasized that the National Managers' Community Professional Development Forum and the Treasury Board Secretariat's leadership development program were two separate training courses, as Ms. Nassrallah, Ms. Lehouillier, and Mr. MacLeod explained.

[423] The grievor's argument that she had informed management that the objectives of her work plans were not achievable was mentioned for the first time in her testimony.

[424] The employer noted that the grievor's allegation that Ms. Kovacs testified that she had been relieved by and happy with the grievor's departure was incorrect and inconsistent with Ms. Kovacs' testimony.

[425] The employer challenged the grievor's argument that Ms. Tattrie did not prepare a learning plan. On that point, the employer relied on the document entitled, "Work plan and reporting information per the assignment letter", which indicated that it had been Ms. Tattrie's and the grievor's joint decision (Exhibit E-1, Tab 26).

[426] As for the grievor's argument about her termination while she was on assignment, the employer submitted that this grievance is not related to an assignment. Additionally, the assignment was not an appointment to a position, and the grievor's position remained her substantive position.

[427] With respect to the claim for damages, according to the employer, if the grievance is allowed, no damages should be awarded. The employer acted in good faith throughout the process; its only desire was that the grievor meet the performance objectives. It argued that there was no sham and that the four *Raymond* factors were met.

IV. Analysis

[428] Under s. 12(1)(d) of the *FAA*, cited earlier in this decision, a deputy head has the authority to terminate an employee who is part of the core public administration when the deputy head is of the opinion that the employee's performance is unsatisfactory. However, s. 12(3) of the *FAA* requires that the deputy head's decision must be for cause.

[429] Section 11(1) of the *FAA* defines "core public administration" as the departments named in Schedule I to the *FAA* and other portions of the federal public administration named in Schedule IV. The Treasury Board is named in Schedule I; therefore, it is part of the core public administration. Section 6 of the *FAA* states that the Chief Human Resources Officer is a public official within the Treasury Board and

that that person has the rank of deputy head. Thus, I find that the Office of the Chief Human Resources Officer is also part of the core public administration.

[430] The Board's jurisdiction over an employee's termination for unsatisfactory performance is limited to some extent by s. 230 of the *FPSLRA*, which reads as follows:

230 In the case of an employee in the core public administration or an employee of a separate agency designated under subsection 209(3), in making a decision in respect of an employee's individual grievance relating to a termination of employment ... for unsatisfactory performance ... the Board ... must determine the termination ... to have been for cause if the opinion of the deputy head that the employee's performance was unsatisfactory is determined by ... the Board to have been reasonable.

[431] That jurisdiction was exercised consistently in several decisions. In *Reddy*, the adjudicator defined its scope as follows at paragraphs 87 and 88:

87 ... The adjudicator's role is to determine whether it was reasonable for the employer to deem the employee's performance unsatisfactory and not whether the decision to terminate was reasonable. If the employer's assessment that the employee's performance was unsatisfactory was reasonable, I must find that the termination that ensued was for cause, and I cannot interfere with that decision, as my jurisdiction is exhausted. The termination can be overturned only if the employer's unsatisfactory assessment was not reasonable. No other conclusion is possible....

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

[432] The Federal Court of Appeal endorsed that approach in *Forner v. Canada (Attorney General)*, 2016 FCA 136, when it found as follows at paragraph 17 that the adjudicator should not have assessed the employee's performance:

[17] The Adjudicator first proceeded to determine whether the applicant's performance was unsatisfactory, he then examined the issue of the reasonableness of the assessment of the Deputy Head, using three criteria taken from Raymond that were raised by the applicant. Since the Deputy Head had determined that the applicant's performance was unsatisfactory, the Adjudicator should have restricted his discussion to the issue of whether the Deputy Head's decision was reasonable instead of proceeding to a two-step analysis as he did.

[433] The adjudicator in *Raymond* set out as follows the criteria for determining whether the deputy head's assessment of an employee's unsatisfactory performance was reasonable:

...

131 ... I do not see how it would be possible to find that it was reasonable for a deputy head to consider the performance of one of his or her employees unsatisfactory if the evidence showed the following:

- *the deputy head or the supervisors who assessed the employee's performance were involved in a bad faith exercise;*
- *the employee was not subjected to appropriate standards of performance;*
- *the employer did not clearly communicate the standards of performance to the employee that he or she was required to meet; or*
- *the employee did not receive the tools, training and mentoring required to meet the standards of performance in a reasonable period.*

...

These criteria have been reiterated in other decisions since then.

[434] However, in this case, I find it useful to reword the *Raymond* criteria as follows:

- Did the employer set reasonable work objectives for the grievor and clearly communicate them to her in advance?
- Did the employer set reasonable performance indicators for her and clearly communicate them to her in advance?
- Did the employer give her reasonable time to meet the work objectives and performance indicators that it set for her?
- Did the employer provide her with all the support she needed to meet the work objectives and performance indicators that it set within the time that she was given?

[435] Mr. MacLeod made the decision to terminate the grievor. However, according to his testimony, he had no direct knowledge of the items supporting the reasons for the termination, since he relied on the opinion of the grievor's supervisors. Therefore, I give little weight to his testimony on this matter.

[436] Mr. MacLeod also testified about the importance and capabilities required for the grievor's position, in accordance with its statement of merit criteria (Exhibit E-22). However, I find that part of his testimony, although it provided context, not relevant to the issue in question. At no time during the grievor's performance monitoring process,

including the termination, did the employer question whether she met the merit criteria of the Public Service Employee Survey team manager position. The employer's reasons for terminating her dealt with meeting the objectives in her performance management plan. Therefore, I find it unfair for the employer to rely on that part of the evidence to now justify her termination, and I will not consider it, for that reason.

[437] On the contrary, I note Mr. MacLeod's testimony that "[translation] analytical thinking" is a core competency of the EC group and one of the first factors that Ms. Lehouillier had to assess before offering the grievor the manager position of the Public Service Employee Survey, Governance, Planning, and Policy Sector, Office of the Chief Human Resources Officer. I also note Ms. Lehouillier's acknowledgement that the grievor met the requirements of that position when she offered it to the grievor. Therefore, I find that since Ms. Lehouillier offered that position to the grievor, at that time, the grievor had the analytical thinking capacity required for it.

[438] However, the evidence indicates that in a discussion with the grievor in November 2012 about the semi-annual performance review, Ms. Lehouillier expressed her concerns about the grievor's ability to meet the requirements of her position. Although the termination letter indicates that the discussion took place on November 6, 2012, the evidence clearly indicates that instead, it was on November 2, 2012.

[439] The termination letter also indicated that Ms. Tattrie informed the grievor that her "[translation] ... performance is still not satisfactory, and the same shortcomings continued, including judgment and understanding, the ability to understand work-related items, and communication". The termination letter did not mention any other shortcomings on the part of the grievor.

[440] First, I will discuss the periods during which the grievor was subjected to a work plan under Ms. Lehouillier's supervision, which was from November 2, 2012, to March 8, 2013, and under that of Ms. Kovacs, which was from April 22 to June 9, 2013. I will then discuss the period of her assignment to the Performance Management Division under Ms. Tattrie's supervision, which was from June 10 to December 10, 2013.

A. The periods under the supervision of Ms. Lehouillier and Ms. Kovacs

[441] On Friday, November 2, 2012, Ms. Lehouillier met with the grievor for two hours to discuss her mid-year performance management and learning report for April 1 to

September 30, 2012 (Exhibit E-2). Ms. Lehouillier assigned her a “Succeeded -” performance rating due to shortcomings with meeting deadlines and in interactions with her subordinates and colleagues. The grievor did not sign the performance management and learning report because she did not agree with the rating.

[442] During the meeting, Ms. Lehouillier informed the grievor that she would be subjected to a performance management plan, including a work plan with seven objectives set by Ms. Lehouillier.

[443] That same day, at 5:48 p.m., Ms. Lehouillier emailed the grievor, informing her that she would prepare a performance management plan, and she attached a work plan. That email also informed the grievor that if her performance did not improve, she would be demoted or terminated. The seven objectives listed earlier in this decision are reproduced here for ease of reference:

...

- a) *Improve judgment and understanding ...*
- b) *Become flexible and faster in her ability to understand work-related items ...*
- c) *Perform management tasks herself ...*
- d) *Improve her management style and approach (focus on communication) ...*
- e) *Deliver work items within the agreed times ...*
- f) *Keep personnel-related information confidential at all times ...*
- g) *Provide support and guidance to employees*

...

[444] The email set out meetings for the grievor with Ms. Lehouillier every two weeks, to follow up on the seven objectives. The outcomes of their discussions were to be written in the grievor’s work plan.

[445] As for the work plan, Ms. Lehouillier set the grievor’s objectives. Her observations were the only performance indicator she set for the following two objectives in the grievor’s performance management plan as indicated in the termination letter: “improve judgment and understanding” and “become flexible and faster in her ability to understand work-related items”. For example, the so-called performance indicator for the “improve judgment and understanding” objective was “[translation] [Ms. Lehouillier’s] observations of [the grievor’s] interpretation of her

duties.” Similarly, the so-called performance indicator for the “become flexible and faster in her ability to understand work-related items” objective was “[translation] [Ms. Lehouillier’s] observations of [the grievor’s] ability to understand her duties.”

[446] The grievor’s third shortcoming mentioned in the termination letter was “[translation] communication”. The only reference to “communication” in Ms. Lehouillier’s work plan is to “improve her management style and approach (focus on communication)”. The performance indicators that Ms. Lehouillier set for this objective were (1) a reduction of the number of incidents and errors and (2) the scarcity of such incidents and errors.

[447] I need not discuss the other objectives in the work plan since they are not related to the grievor’s shortcomings mentioned in the termination letter.

[448] First, the grievor raised the lack of precision in the objectives and performance indicators in the work plan. She replied to Ms. Lehouillier in an email on November 6, 2012, in which she emphasized that in her opinion, the objectives were too vague and that she would comment more fully later.

[449] The grievor sent a detailed email to Ms. Lehouillier on November 22, 2012, with the work plan that included her comments (Exhibit E-1, Tab 6). Among other things, the grievor noted that her performance management and learning report indicated that she had achieved 9 of the 10 objectives set out and that some of the objectives of her work plan lacked precision. She also indicated that she and Ms. Lehouillier had to set objective criteria together that would determine whether she had met the seven expectations in the work plan. On this point, the grievor wrote that some of the objectives lacked precision and that she wanted to better understand what management expected of her and how her performance would be assessed with respect to the objectives.

[450] The grievor consistently maintained her position with respect to the lack of clarity in the objectives and performance indicators in her work plan used in the management of her performance. In an email to Ms. Nassrallah of April 12, 2013 (Exhibit S-22), the grievor told her of the situation she had experienced with Ms. Lehouillier. Among other things, she wrote that she had never received a response to her email of November 22, 2012, in which she asked that the objectives in the work plan be clear, measurable, attainable, relevant, and set in a time frame. In her email to

Ms. Nassrallah of April 18, 2013 (Exhibit E-12), she indicated that the management of her performance did not follow the standards. The next day, she again wrote to Ms. Nassrallah on this matter (Exhibit E-13). In Ms. Lehouillier's email to Ms. Guilhem of April 19, 2013, about Ms. Lehouillier's meeting with the grievor on April 18, 2013 (Exhibit S-10), Ms. Lehouillier indicated that the grievor had told her that she did not accept the work plan, that she found it flawed, and that it did not follow the Treasury Board's performance management steps. She indicated that the grievor felt that the work plan "[translation] ... is not 'SMART' enough, specific, measurable, achievable, realistic, and timely".

[451] On May 15, 2013, Ms. Kovacs gave the grievor a work plan for April 22 to May 14, 2013. It was the first work plan she received since the one on March 8, 2013, which was the last one from Ms. Lehouillier. In an email to Ms. Kovacs on May 22, 2013 (Exhibit E-3), the grievor wrote the following, among other things:

[Translation]

The work plan submitted to me should not be based solely on "attitudes and behaviours" but rather on clear, attainable, and measurable objectives. It is essential that the parties agree in advance on the deliverables and comment a few weeks later if the results were achieved. The work plan presented to me does not do that. It is a list of criticisms that offers little or no context.

[452] In her letter to Ms. Nassrallah of June 10, 2013 (Exhibit E-1, Tab 25), the grievor reiterated that the work plans were poorly designed and that they did not include clear and measurable objectives.

[453] How did the employer respond to the grievor's work-plan concerns? She wrote to Ms. Nassrallah four times, on April 12, 18, and 19 and on June 10, 2013. Ms. Nassrallah never replied in writing. Mr. Béliveau's letter to the grievor, dated July 23, 2013, was in response to her communications expressing her disagreement with the assessment of her performance and, in his words, "[translation] the recovery plan for unsatisfactory performance". Among other things, he wrote the following:

[Translation]

...

... The quantity and content of your communications also demonstrate your lack of commitment to resolving the situation. The employee's collaboration is essential in an action plan for unsatisfactory performance. Therefore, I count on your close

cooperation as of today. If you do not comply with this directive, I will have no choice but to immediately terminate your employment at the [Treasury Board Secretariat].

...

[454] The grievor raised concerns that she felt were legitimate; namely, in her opinion, the work plan was flawed because the objectives had to be clearer, measurable, attainable, and set in a time frame.

[455] As for the clarity of the objectives set by Ms. Lehouillier, “improve judgment and understanding” and “become flexible and faster in her ability to understand work-related items” cannot be called models of precision. As the work plan she prepared did not indicate to the grievor the specific objectives she was to achieve, she could not know in advance how to improve her performance in those areas. I find that the employer did not set reasonable work objectives for the grievor and that it did not clearly communicate such work objectives to her in advance.

[456] Furthermore, the results achieved as indicated in the work plans did not always stem from direct observations of the grievor by Ms. Lehouillier or Ms. Kovacs. While Ms. Lehouillier was away from November 23 to December 2, 2012, she was replaced by Mr. Cadieux. They are his observations, which he made based on his interaction with the grievor with respect to the structural equation modelling email, which Ms. Pinto sent directly to Ms. Lehouillier. They are in the “results achieved” column for the “improve judgment and understanding” objective in the work plan dated December 7, 2012.

[457] Ms. Lehouillier acknowledged that in part, she considered observations from others, such as Ms. Coghlan, Ms. Kovacs, and Ms. Pinto. For example, on December 20, 2012, Ms. Coghlan met with Ms. Lehouillier about her interactions with the grievor. On December 31, 2012, Ms. Lehouillier emailed Ms. Coghlan, summarizing their meeting and asking for other examples of Ms. Coghlan’s interactions with the grievor (Exhibit E-14). In another email exchange between her and Ms. Lehouillier on March 28, 2013 (Exhibit E-16), the first email, which Ms. Coghlan sent at 2:26 p.m., reads as follows: “Do you want more examples?” Ms. Lehouillier’s response, at 2:30 p.m., was just this one word, in capital letters: “YES!” At 2:37 p.m., Ms. Coghlan forwarded an email to Ms. Lehouillier that the grievor had sent her that day at 1:30 p.m., about a comparison of the number of questions in the 2011 and 2014 surveys.

[458] Ms. Lehouillier asked Ms. Kovacs to provide her with comments on her experiences with the grievor. In her reply of January 14, 2013 (Exhibit E-1, Tab 11), Ms. Kovacs commented negatively about the dashboard project and the fact that the grievor had provided incorrect information at a meeting with the director general. In the work plan for January 16, 2013, for the “improve judgment and understanding” objective, the results column indicates that the grievor provided incorrect information at a consultation meeting and that negative feedback was made about the dashboard. Similarly, in the results column for the “become flexible and faster in her ability to understand work-related items”, Ms. Lehouillier also mentioned that negative feedback was made about the dashboard. The same comment is also included in the results column for the “improve her management style and approach (focus on communication)” objective for December 8, 2012, to January 16, 2013. As for that last objective, the only other comment Ms. Lehouillier noted was in the work plan for March 8, 2013, in which she indicated that employees had told her that they had to listen to the grievor’s “[translation] sermons”. For the other periods in the work plans, Ms. Lehouillier indicated that there was nothing special to report with respect to that objective.

[459] Ms. Kovacs supervised the grievor from April 22 to June 10, 2013, while she was the director on an acting basis in the position previously held by Ms. Lehouillier. Ms. Kovacs testified that during her meeting with the grievor on April 22, 2013, she informed the grievor that she would continue to apply the work plan that Ms. Lehouillier had established. On May 15, 2013, she gave the grievor a work plan for April 22 to May 14, 2013. It was the first work plan the grievor received since the one that ended on March 8, 2013. That work plan was a verbatim copy of the one that Ms. Lehouillier had established, with the same objectives and performance indicators for the three shortcomings mentioned in the termination letter. During the period covered by this work plan, due to leave taken by the grievor and Ms. Kovacs respectively, only eight working days remained during which Ms. Kovacs could have observed the grievor’s performance.

[460] With respect to the first objective (“improve judgment and understanding”), Ms. Kovacs noted that staff members had informed her that the grievor had given them an incorrect directive. The example provided involved a briefing note to the Treasury Board’s president seeking authorization to conduct the 2014 Public Service Employee Survey. The grievor was of the view that the title of the briefing note should

remain “For your information” instead of “For your approval”. The Director General noticed the error at the end of the day and referred the briefing note to Ms. Kovacs. A correction was required to the briefing note and to multiple copies of it, for signature. According to Ms. Kovacs, it was an example of a lack of understanding of the nature of briefing materials.

[461] The example provided for the second objective (“become flexible and faster in understanding work-related items”) was mentioned earlier in this decision with respect to the meeting with a director general of human resources at the Treasury Board Secretariat. Ms. Kovacs noted on the work plan that she believed that the grievor had spent too much time explaining the requirements of the plan in question, both verbally and by using a whiteboard.

[462] On the “improve her management style and approach” objective, Ms. Kovacs noted two things in the work plan: an employee had told her that she had been frustrated with the grievor’s tone when the grievor asked her to leave her office in a time of a request for immediate assistance, and in a discussion with Ms. Kovacs, the grievor replied, “You are the boss.”

[463] As for the objectives of the work plan for which Ms. Lehouillier’s and Ms. Kovacs’s observations were the only performance indicator for the grievor, her shortcomings had to be brought to her attention retroactively, once the action had been taken. In other words, only if the grievor did something that her supervisors felt was a shortcoming would they inform her via feedback, which, according to the work plan’s terms, was to be done every two weeks. There was no evidence that for the objectives in question, Ms. Lehouillier set clear performance indicators and communicated them clearly to the grievor so that she could know exactly what the employer expected from her in terms of performance. I find that in those circumstances, the grievor could not have known in advance how she would be assessed for the “improve judgment and understanding” and “become flexible and faster in her ability to understand work-related items” objectives. I find that the employer did not set reasonable performance indicators for the grievor with respect to these objectives and that it did not communicate them clearly to her in advance.

[464] I also find that by relying in part on the comments or observations of other employees when assessing the grievor’s performance, Ms. Lehouillier and Ms. Kovacs

were unable to assess the grievor's performance entirely on their direct observations, which was contrary to the performance indicators set by Ms. Lehouillier and maintained by Ms. Kovacs. Indeed, Ms. Lehouillier and Ms. Kovacs changed the performance indicators without making it clear to the grievor in advance.

[465] I will now examine the issues of whether, while she was under the supervision of Ms. Lehouillier and Ms. Kovacs, the employer gave the grievor reasonable time in which to meet the work objectives and performance indicators that it had set for her and whether it provided all the support she needed to meet the work objectives and performance indicators that it had set within the time it had allowed her.

[466] As for the time set out for the grievor to meet the objectives that the employer set, the calculation must begin at the moment she was informed of the implementation of the performance management plan, the work plan, and the warning that if she did not improve, she would be demoted or terminated. As she was notified at the end of the day on Friday, November 2, 2012, the period effectively began on Monday, November 5, 2012, and lasted six months, until she was assigned to another position on Ms. Tattrie's team, effective June 10, 2013 (although seven months passed between those two dates, nevertheless, the grievor was on sick leave for one month). Under normal circumstances, I would have found that a six-month period was a reasonable time to allow the grievor to achieve reasonable performance objectives and indicators clearly communicated in advance since she had been in her position since December 2011. However, given my findings that the employer did not set reasonable work objectives and performance indicators for the grievor, which it should have clearly communicated to her in advance, I find that she could not meet the objectives and indicators that the employer set for her, regardless of the period allotted for doing so.

[467] The employer argued that it provided the grievor with ample training. Management's measures to improve her performance included coaching sessions at the School of Public Service, the Treasury Board Secretariat's leadership development program (see Exhibit E-10), and her participation in the National Managers' Community Professional Development Forum, the theme of which was leadership (see Exhibit E-11).

[468] The grievor participated in the National Managers' Community Professional Development Forum in May 2012, thus well before Ms. Lehouillier implemented the grievor's performance management plan. Additionally, no evidence was presented on

the conferences or workshops that the grievor attended or whether they were relevant to the “improve judgment and understanding”, “become flexible and faster in her ability to understand work-related items”, and “improve her management style and approach (focus on communication)” objectives. Therefore, I do not consider this as an example of training provided to the grievor to help her improve her performance.

[469] The employer submitted other examples of training offered to the grievor.

[470] In November 2012, the grievor attended the Treasury Board Secretariat’s leadership development program, which included 10 to 12 hours of follow-up in the form of coaching.

[471] As another example of support, at their meeting of January 16, 2013, Ms. Lehouillier informed the grievor that the employee who had been subjected to a performance management monitoring plan had been placed under Ms. Chatterton’s supervision, to provide her with supervisory experience. As a result, the grievor would have more time to work on her projects and to meet deadlines.

[472] In addition, during their meeting of February 18, 2013, at which the grievor said that she needed more time to concentrate, Ms. Lehouillier offered that the grievor could work from home and asked the grievor what she could do to help the grievor with similar work in the future.

[473] Although those examples show that the employer was trying to find ways to support the grievor, they do not focus on improving the objectives of “improve judgment and understanding”, “become flexible and faster in her ability to understand work-related items”, and “improve her management style and approach (focus on communication)”.

[474] The employer submitted that the verbal and written feedback that the grievor received from her supervisors was an important part of her training and mentoring. Ms. Lehouillier provided written comments on the grievor’s work plans and held meetings with her about her work. As for Ms. Kovacs, bilateral meetings were held with the grievor every week or two, and informal and daily meetings were held to deal with file issues, to clarify the items that she had to follow-up on, and to identify priorities. That is true. However, as I explained earlier in this decision, this feedback was retroactive since no performance indicators were clearly communicated to the grievor

in advance. I find that the employer did not provide the grievor with all the support she needed to meet the work objectives and performance indicators that had been set within the time given to her. In other words, the employer did not provide all the support she needed to “improve judgment and understanding”, “become flexible and faster in her ability to understand work-related items”, and “improve her management style and approach (focus on communication)”.

[475] In light of the evidence and the applicable criteria, I find that it was unreasonable for the employer to find that the grievor’s performance was unsatisfactory during the period in which she was subjected to a performance management plan on the Public Service Employee Survey team.

B. The period under Ms. Tattrie’s supervision

[476] The grievor was under Ms. Tattrie’s supervision during her assignment to the Performance Management Division from June 10 to December 10, 2013. The grievor’s objectives during that period, as set out in her work plans, were as follows: (1) complete the files from her former work on the Public Service Employee Survey; (2) transition to the Performance Management Division; (3) evaluate bids for a change-management contract; and (4) lead the development and ongoing management of the performance management questions and answers.

[477] However, in the termination letter, the employer identified the following three shortcomings with the grievor’s performance: judgment and understanding, ability to understand work-related items, and communication. The evidence demonstrated no link between these grounds for termination and the first three objectives set out in the grievor’s work plans during the period in which she was under Ms. Tattrie’s supervision. Therefore, the employer could not rely upon the first three objectives set out in the work plans to support the grievor’s termination for unsatisfactory performance.

[478] The only objective set out in the work plans that the employer could rely upon is the fourth one, which states, “lead the development and ongoing management of the performance management questions and answers”. Ms. Tattrie’s testimony clearly established that this objective represented the essence of the grievor’s duties. I find that this is the only objective that could be linked to the “[translation] same ongoing

deficiencies”, to which the employer referred in the termination letter, with respect to judgment and understanding and the ability to understand work-related items.

[479] In her testimony and her observations on the work plans, Ms. Tattrie indicated that the lack of judgment and the shortcomings in the grievor’s ability to think things through were due mainly to the fact that she wrote the answers on performance management before sending them to the experts, of whom she made little or no use when preparing the questions and answers.

[480] The grievor provided her comments in response to those of Ms. Tattrie on the work plan documents for each period from June 10 to September 30, 2013, in the annotated work plans she provided to Ms. Tattrie on November 14, 2013 (Exhibit E-5), and that the employer entered into evidence at the hearing. According to the grievor’s comments, once Ms. Tattrie clarified that she had to ask the experts to prepare the answers to questions about performance management, the grievor complied. Ms. Tattrie testified that she did not respond to the grievor’s comments and that she did not discuss her comments with her, and the employer did not contradict the grievor’s evidence.

[481] I find that on a balance of probabilities, the evidence that the grievor complied with Ms. Tattrie’s instructions with respect to the use of experts to prepare answers to performance management questions outweighs Ms. Tattrie’s testimony in this respect. Additionally, Ms. Tattrie did not respond to the letter the grievor sent her on November 14, 2013 (Exhibit S-26), in which the grievor also referred to her interactions with the experts.

[482] As the grievor’s evidence indicated that she complied with Ms. Tattrie’s instructions with respect to the only work objective to which the employer could refer in the termination letter, and since the employer did not contradict that evidence, I find that I do not need to analyze the applicable criteria for the period in which the grievor was supervised by Ms. Tattrie. As the grievor met the only relevant objective that the employer had set for her, I find that it was unreasonable for the employer to find that her performance was unsatisfactory during the period in which she was subjected to a performance management plan in the Performance Management Division, during her assignment under Ms. Tattrie’s supervision.

C. Corrective measures

[483] In view of my findings that it was unreasonable for the employer to consider the grievor's performance unsatisfactory, I allow the grievance.

[484] The grievor pointed out that she could not have been terminated while she was on assignment under Ms. Tattrie's supervision and that she should have been reinstated into her substantive position as the manager of the Public Service Employee Survey team. As her grievance is allowed, I do not need to examine that argument.

[485] As a corrective measure, the grievor asked to be reinstated into her position as the manager of the Public Service Employee Survey team or into an equivalent position at the EC-07 group and level with compensation and benefits and interest at the Bank of Canada's prescribed rate retroactive to her termination date. The employer made no submission to me in this respect. Furthermore, I have no evidence before me that the position of the manager of the Public Service Employee Survey, Governance, Planning, and Policy Sector, Office of the Chief Human Resources Officer, Treasury Board, is vacant.

[486] The grievor also requested an award of psychological damages of \$300 000. She alleged that the effects of the performance management process on her health, along with going to work and being criticized, had become humiliating. In this matter, no independent evidence was presented to establish a causal link between the management of her performance and her state of health or her allegation of humiliation. Therefore, I cannot grant this request.

[487] The grievor also sought an award of punitive damages of \$150 000 due to the employer's actions against her. In this case, I believe that her reinstatement is sufficient to deter the employer from in the future managing what it perceives to be an employee performance problem in the manner it did in this case.

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

(The Order appears on the next page)

V. Order

[489] The grievance is allowed.

[490] I order the following:

- a) that the grievor be reinstated at the EC-07 group and level with pay and no loss of benefits, effective January 6, 2014;
- b) that within 60 days of this decision, the Chief Human Resources Officer shall reimburse the grievor's pay at the EC-07 group and level, effective January 6, 2014, with annual interest at the Bank of Canada's prescribed rates, taking into account the usual deductions;
- c) that within 60 days of the decision, the Chief Human Resources Officer shall reinstate the grievor's pay at the EC-07 group and level, with salary protection and benefits, from the date of the reimbursement provided in paragraph 490 (b) of this decision; and
- d) that within 90 days of this decision, the Chief Human Resources Officer shall reinstate the grievor into a position at a group and level equivalent to the EC-07 group and level for which she is qualified.

[491] I will remain seized of any matter related to the calculation of the amounts owing under paragraph 490 of this decision for 90 days from the date of this decision.

February 19, 2020.

FPSLREB Translation

Steven B. Katkin,
a panel of the Federal Public Sector
Labour Relations and Employment Board