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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

LOUISE MCLAREN

Grievor

and

**DEPUTY HEAD
(Statistics Canada)**

Employer

Indexed as

McLaren v. Deputy Head (Statistics Canada)

In the matter of an individual grievance referred to adjudication

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

For the Grievor: Herself and Jean-Michel Corbeil

For the Employer: Philippe Giguère

Heard at Ottawa, Ontario,
July 15 to 18 and December 2 to 5, 2019.

REASONS FOR DECISION

I. Individual grievance referred to adjudication

[1] On May 4, 2017, the grievor's employment with Statistics Canada ("the employer" or "the deputy head") was terminated on the grounds of unsatisfactory performance. She grieved the decision to terminate her employment.

[2] Her grievance was denied and was ultimately referred to adjudication on July 19, 2017, pursuant to s. 209(1)(c) (i) of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2).

[3] The matter was heard in Ottawa, Ontario, from July 15 to 18, 2019, inclusive, and from December 2 to 5, 2019, inclusive. On July 31, 2019, the Canadian Association of Professional Employees advised that it was no longer representing the grievor, at which time the grievor began representing herself.

II. Overview of the circumstances that gave rise to the termination

[4] In 2014, the grievor held an economist/statistician position classified at the EC-04 group and level in the Agriculture Division of Statistics Canada. She sought work of a more complex analytical nature because she wanted to enhance her career opportunities. In the spring of 2015, her manager assigned her two projects in an effort to expand her analytical workload.

[5] Performance deficiencies were identified over the course of the two projects, and in September of 2015, she was placed on a formal action plan ("Action Plan 1"), the purpose of which was to bring her performance up to the level expected of an EC-04. The substantive content of Action Plan 1 was the continuation of the two projects assigned earlier that year. Action Plan 1 was to conclude on December 22, 2015.

[6] On December 31, 2015, the employer extended the end date of Action Plan 1, noting continuing performance issues.

[7] The grievor and her supervisors met on March 1 and 2, 2016, concerning the conclusion of Action Plan 1 and the start of "Action Plan 2". The meetings were highly confrontational and resulted in a letter of expectations dated March 8, 2016, emphasizing the importance of respectful workplace behaviour.

[8] Meetings between the grievor and her supervisors remained confrontational and were frequently characterized by her demands to retract or rewrite previous performance evaluations, which they refused to do. Action Plan 2 was never implemented because the grievor was absent from the workplace. On May 24, 2016, the Director General of the Agriculture Division placed the grievor on administrative leave owing to incidents that occurred in the workplace on May 10 and April 7, 2016. In his letter, he advised her as follows: "... you will not be allowed to return to the workplace until such time as a physician attests to your fitness to work."

[9] Several months later, the grievor provided a medical certificate to the Director General, who permitted her to return to the workplace. In a meeting on September 6, 2016, he placed her on another action plan, "Action Plan 3". She began reporting to a different supervisor. In a letter outlining performance expectations and behaviour in the workplace, the Director General warned her that "[w]e consider this matter very serious. Please be advised that failure to comply with any of these guidelines may result in disciplinary action, such as, written reprimand, suspension, demotion, or termination."

[10] Action Plan 3 ran from September 12 to December 16, 2016. On December 20, the final assessment of Action Plan 3 was provided to the grievor. It indicated that she did not succeed in elevating her performance to the level expected of an EC-04. As a result, a fourth action plan ("Action Plan 4") was prepared.

[11] On January 10, 2017, the employer provided the grievor with a letter entitled, "RE: Performance Management - 3 Month Warning", stating, "[i]f your performance has not improved to the point where you meet the requirements of your position, I may proceed in demoting or terminating you from your position for unsatisfactory performance ...".

[12] Action Plan 4 ran from January 10 to April 10, 2017. On January 13, a meeting was held to discuss it, but the grievor insisted instead on a re-evaluation of the previous action plan. The manager attempted several times to return the discussion to the implementation of the new action plan, but the grievor continued to interrupt him. He abandoned his attempts to conduct the meeting and ended it.

[13] On January 26, 2017, the grievor received a written reprimand for belligerent and disrespectful behaviour during the January 13, 2017, meeting. In the letter, she

was reminded of "... the importance of working collaboratively with [her] supervisor ..." and of "... the consequences of not doing so ...".

[14] On February 10, 2017, a one-month evaluation of Action Plan 4 was provided, in which her supervisor noted, "[e]very form of communication with [the grievor] was difficult in the first two weeks of the project. [The grievor] could not accept the assessment of the previous action plan and was not open to discuss the current one."

[15] The second interim evaluation of Action Plan 4 took place on March 17, 2017. It noted deficiencies in her weekly reporting, including the following:

...
... The information provided does not provide a clear description of the tasks performed, problems encountered and most importantly options and recommendations. It is not detailed enough and too often - as with your other forms of communication related to the project- accompanied with opinions or comments that are not relevant to the project itself but more related to your personal situation....

[16] On April 12, 2017, the grievor received her final evaluation for Action Plan 4. She did not meet expectations, and on May 4, 2017, she received a termination letter, which was the subject of her grievance. For the reasons which will follow, her grievance is denied.

III. Summary of the employer's evidence

A. The grievor's performance from April 1, 2014, to March 31, 2015

[17] In 2014, the grievor's direct supervisor in the Agriculture Division was Michael Paju, who reported directly to the section's chief, Cynthia (Cindy) St. Germain. Mr. Paju had taken up his responsibilities as the grievor's supervisor upon his arrival in the section in November of 2013.

[18] On May 8, 2014, Mr. Paju sent Ms. St. Germain an informal document in which he briefly summarized some of his observations. He noted that from November of 2013 to January of 2014, a couple of times per week, the grievor complained to him about "the injustice in competitions." He also noted how she accused him of being critical of her work.

[19] Mr. Paju noted that on April 28, 2014, the grievor mentioned wanting to do work that was composed of more analysis and less programming. He told her that he would raise it with Ms. St. Germain and that he would look into the possibility of a reassignment to a division more focused on analytical issues. Ms. St. Germain testified to making inquiries but finding no suitable locale. According to Ms. St. Germain, performance management was an important consideration, and it would not have been optimal for either the organization or the grievor to move her to a different reporting environment, given the performance issues noted by Mr. Paju.

[20] Ms. St. Germain testified as to how the yearly assessment of the employees' performance is conducted. Performance is assessed over the fiscal year, which is from April 1 to March 31 of the following year. A mid-year review usually takes place in September, and the year-end review is usually in late March.

B. Performance reviews for the 2014-2015 fiscal year

[21] The grievor's mid-year performance review for the 2014-2015 fiscal year took place with Mr. Paju on September 26, 2014. The review was positive, with the note, "On track to meet expectations".

[22] The 2014-2015 year-end assessment was not as positive. The grievor received a rating of "Succeeded [Minus]" in both Section B (Work Objectives) and Section C (Competencies and Expected Behaviours). The definitions of this rating for those respective sections are as follows:

Section B

Succeeded [Minus]: Performance meets some but not all expectations. The employee demonstrates the potential and motivation to achieve his or her work objectives; however, occasional lapses have been observed during the performance management cycle. Performance results indicate a need for improvement or development in some areas.

Section C

Succeeded [Minus]: The employee has shown inconsistencies in the demonstration of effective behaviours in typical day-to-day situations.

[23] The year-end assessment was provided to the grievor on March 24, 2015. Mr. Paju testified that he began their meeting, as he noted in the assessment, as follows:

...

... by pointing out her accomplishments for the year and then started talking about where I saw a need for improvement. The meeting lost focus after I gave her the first example. She brought up past concerns and issues ... which I listened to, but I had difficulty bringing us back to purpose [sic] of the meeting.

...

[24] The grievor's comments on that assessment included the following:

I think blaming me for the results of the meeting is not fair; I felt at the time my side was not considered and I think that violated the purpose of having a discussion. There was no chance to have my side heard and I felt that the examples given did not give the entire picture. I felt I was given examples without context and my supervisor failed to acknowledge his faults and a focus on documenting, which could be seen as a threat given the constant negative comments towards me and telling me to go on a CAD [a reassignment to another division]. I wish for both sides to be considered when a permanent document is made.

Blaming me for this meeting clearly indicates to me that there is a need for a more professional attitude towards me. I wish for my supervisor to work in a more collaborative manner.

...

[25] Mr. Paju's commentary in Section B (work objectives) included the following observations:

[The grievor] is strongly encouraged to review and document her work ... She needs to take time to review her work for completeness, quality and accuracy, which is expected at her group and level.

When assigned new work, [the grievor] needs to work more independently—preparing work plans, balancing her priorities, resolving specific issues, analysing [sic] outputs carefully and documenting findings.

...

In our new working environment, we all need to face new challenges and take on new responsibilities. I do not believe the work assigned to [the grievor] (new and reoccurring) is outside the expectations of her group/level and beyond her understanding of the program, which she has worked on for many years.

[26] The grievor responded as follows, in part:

... This evaluation score appears to not be a true reflection of the hard work and dedication I have had and undervalues the good work I do.

...

I have asked to report to somebody else. I need constructive and appropriate communication in my work place, especially with the changes today. I have felt that when I explained things to my supervisor, my input is not received as a professional's input....

[Sic throughout]

[27] Section C of the year-end assessment evaluates the four distinct core competencies. With respect to “Demonstrating integrity and respect”, Mr. Paju wrote:

[The grievor] mostly demonstrated integrity and respect within the Ag-Tax team and with other CAFS members, management and others from our service Division areas. However, at times, she has difficulty when faced with adversity, change or setbacks. In our ever changing work environment [the grievor] needs [sic] maintain a constructive attitude and learn how to deal with adversity and change.

[28] With respect to “Thinking things through”:

[The grievor] needs to work more independently, which is expected at her group and level. She needs to learn from her mistakes and is encouraged to accept feedback and advice constructively. When taking on new tasks she is encouraged to document instructions and procedures, especially with reoccurring tasks. This will assist her in the effective completion of reoccurring work.

[29] He wrote the following about “Working effectively with others”:

[The grievor] needs to continue to work collaboratively and effectively with others. She is encouraged to accept feedback from colleagues and recognize that these contributions and views are intended to assist and enhance the overall quality of her work.

[30] He wrote the following about “Showing initiative and being action-oriented”:

The Agriculture Tax Data Program will be changing in less than a year and so will the roles and responsibilities. [The grievor] needs to maintain a positive attitude in the face of change and be open to new solutions or approaches. [She] is encouraged to accept new challenges and opportunities within the Agriculture Division and other areas of Statistics Canada to help her develop professionally and personally.

[She] is involved in extracurricular activities and committees such as the Government of Canada GCWCC and the Employee Equity Women's Sub Group. These initiatives will be beneficial to her personal and professional development.

[31] The grievor responded at great length. Her comments included the following:

I am positive and friendly to staff.

...

... it is not my goal to become a programmer, which re-assigned duties were....

In my opinion, the comment is not fair ... I receive calm, constructive comments openly and I work well with most staff; less negative comments would assist in evaluating what I do....

...

I am positive towards change and I find that our area did not do constructive feedback very well but is improving....

...

I think I have more than meet the expectations of the job; that this isn't a fair and equitable evaluation nor was it in the spirit of excellence, management needs to restore respect and assign a higher score.

[Sic throughout]

[32] Both Mr. Paju and Ms. St. Germain testified to the grievor's repeated oral and written insistence that her "Succeeded [Minus]" score on the 2014-2015 performance assessment be revisited and that she receive a higher evaluation. The evaluation was not changed. Ms. St. Germain testified to the necessity for an action plan to permit the grievor to demonstrate that her skills were up to standard.

[33] In her testimony, Ms. St. Germain referred to the work description for the EC-04 position to provide context to the job skills. The grievor's position, an "Economist/Sociologist 4", had the responsibility to provide "[s]tatistical information, analytical products and services for Statistics Canada, all levels of government, industry, academia and other special interest groups."

[34] The key activities of an Economist/Sociologist 4 are described in the work description as follows:

- *Undertakes the analysis of statistical program data and assists in the preparation of analytical material for internal use and publication purposes.*
- *Participates in the analysis of socio-economic trends and developments to assess the feasibility and impact of new or modified statistical programs.*
- *Suggests feedback on collection processing, editing, compilation and presentation methods and procedures following data analysis and assists in the development of recommendations for improvements to survey methods and activities.*
- *Provides assistance and subject matter advice to data users within and outside STC.*
- *Undertakes subject matter studies/reviews in support of project teams or senior officers.*
- *Leads project teams involved in special studies.*

[35] The work description has the following notation: “Key activities are reflective of general responsibilities. Not all activities are performed by all positions on a continuous basis.” Ms. St. Germain testified that the first three or four of the bulleted points quoted in the last paragraph were quite prevalent and were characteristic of the everyday work expected of someone at the grievor’s level.

[36] Ms. St. Germain testified that none of the tasks the grievor was asked to perform were at a level of complexity or difficulty above what was expected of an economist/sociologist classified at the EC-04 level.

[37] One of the grievor’s recurring tasks was called the “monthly load” for the tax program. Mr. Paju supervised her on it. Ms. St. Germain testified to being receptive to the grievor’s desire to take on a project that would allow her to demonstrate her analytical skills.

[38] Three weeks after the March 24, 2015, year-end performance assessment meeting took place, Ms. St. Germain proposed what she termed the “Cost of Production” project in an email dated April 14, 2015, as follows:

As a follow-up to our meeting yesterday, ... [the director of the Agriculture Division at the time] will be addressing your concerns regarding your work environment. In the mean time [sic], you will continue work on the monthly load for the tax program. You will also identify other key activities that you could maintain while you work on the cost of production project between now and the end of July. Please identify the other key activities you said you could

continue to work on by Friday, April 17, 2015. You will continue to report to Mike [Paju] on the tax project. You will report to me on your cost of production project. Mike will continue to remain your main supervisor.

The cost of production project will provide you with the opportunity to illustrate, but not limited to [sic], your analytical skills, your initiative, your creative thinking your thoroughness and project planning.

...

[39] Ms. St. Germain testified that the concerns that the grievor raised in her comments on the 2014-2015 year-end assessment were not consistent with what Ms. St. Germain had observed in the workplace. She found that generally, the grievor was unwilling to take responsibility for her mistakes, and that her defensive stance to any form of criticism made it very difficult to manage her.

[40] The Cost of Production project was intended to measure the health of the grape production industry through an analysis of a very specific data set. The first step of the project was to populate the data set by linking the Canada Revenue Agency's "Whole Farm" tax record data with survey data from the "Fruit and Vegetable Commodity Survey".

[41] Mr. Paju testified that the monthly load project was a recurring task that the grievor had already been performing for some time in her current position. It involved gathering data from the Canada Revenue Agency on T2 tax filers. Approximately three days per month had to be set aside to complete it. Action Plan 1 was structured so that she reported directly to Mr. Paju on this particular project, which was referred to in the action plan as the Agriculture Tax Data Program (ATDP).

C. Performance assessment for fiscal 2015-2016: mid-year review

[42] The grievor's mid-year assessment for fiscal 2015-2016 took place in mid-September of 2015. Ms. St. Germain testified to the difficulty she encountered getting the grievor to agree to attend a meeting to discuss the assessment. Since Ms. St. Germain was supervising the Cost of Production project and Mr. Paju was supervising the ATDP, Ms. St. Germain wanted all three of them to meet.

[43] The grievor questioned Ms. St. Germain as to why both Ms. St. Germain and Mr. Paju had to be present. On September 8, 2015, Ms. St. Germain replied, “It is best that Mike and I meet you together.”

[44] The following day, September 9, 2015, at 3:54 p.m., the grievor wrote to Ms. St. Germain, stating, “It does not say you both have to be there. It says you have to confirm it happened.” She also advised Ms. St. Germain as follows: “I will get back to you ...”.

[45] Nine minutes later, Ms. St. Germain replied, “We will provide comments to you prior to the meeting. You are expect [sic] to be present at the meeting. Failure to do so will be considered as insubordination and may result in a [sic] disciplinary action being taken”.

[46] The meeting eventually took place on September 14, 2015. According to Ms. St. Germain and Mr. Paju, the grievor’s assessment was based primarily on her performance on her two projects: the ATDP (supervised by Mr. Paju), and the Cost of Production research project (supervised by Ms. St. Germain). She was assessed as follows: “Performance results to date indicate need for improvement”.

[47] With respect to the ATDP, Mr. Paju made these comments, in part:

... [The grievor] needs to continue to pay closer attention to the details of her work and verify the accuracy in order to minimize errors. Although some of these errors may seem negligible or insignificant, for example, wrong reference month name in email sent to ADD, they should not be reoccurring. [The grievor] created an email template to help reduce the errors (typos) but it has not eliminated them completely....

...

[48] Ms. St. Germain commented on the grievor’s mid-year performance on the Cost of Production research project, in part, as follows:

...

Throughout the project [the grievor] provided weekly status reports. In addition, one-on-one meetings were organized to address any concerns noted throughout the progress. These meetings were necessary to keep the project on track. The first deadline of April 30 was met with a draft plan and the final plan was completed by May 22 2015 (although work on the project had

begun). The deadline of June 15 was delayed as [she] needed more direction regarding which files to link.

Although it was always stated that the project was to link the tax data with the fruit and veg data. [The grievor] tried linking to the FFS data. She explained that she did this step as the tax program doesn't capture balance sheet information and she needed this information to calculate ratios. This could be useful in the future but was not part of the project. It appears that [she] was focusing on the suggested topics for analysis as opposed to the task of linking the files then seeing what can be concluded for the data sets.

On various occasions [the grievor] was reminded that the ratios, land variables etc. were ideas for analysis. The actual analysis would come after a dataset was established and the variables available identified. The July 15th deadline was extended prior to her holidays in early August. [The grievor] sent an email prior to her holidays indicating the draft report was ready for review but forgot to attach the file. The Chief did not have time to review the report prior to her holidays as the document was not available with sufficient time.

However, the Chief did provide a few quick suggestions to focus the report more on the how as opposed to what didn't work. There was also no written analysis provided only a set of tables. The Chief asked a colleague to review the document while she was away to allow [her] to get other feedback and work on the report while she was on holidays. The feedback she was provided was to focus on the proof of concept. I explained to the grievor] this was required but I am also expecting analysis of the industry.

[The grievor] continues to work on the report and has provided documents on September 3 for further review. As this project is not completed this task will remain as an objective.

[Sic throughout]

[49] The grievor was unhappy with the rating she received at mid-year 2015 and with the comments that Ms. St. Germain and Mr. Paju provided on her assessment. She once again responded at great length, including the following:

I need management-INM

"Verify"-excludes being unable to adjust tasks to my work style, what a professional expects. I e-mailed I created a template to avoid errors; the reply implied I was changing file names. These comments cause more errors...

...

... Met with confrontation, refusal, critiques. I only wanted a return of analysis. INM: allocate duties appropriately without fear of reprisal, collaboration and documentation complete and accurate.

[This] appears to blame me even though often I have been e-mailed I'm not blamed. I repeatedly informed the manager the links were not available, I was told to find it, delaying the project unnecessarily and criticized for finding an alternative.

...

... INM: to recognize when comments hurt the work environment and focus on more constructive comments and balance.

...

June 10 - told not to do research; I needed information to interpret ratios and the industry. INM: provide appropriate latitude so I can do my job.

...

The manager indicated I forgot an attachment; using the shared directory would have helped or they could have called me. INM: recognize that the work load is larger, more prone to errors, adjust expectations.

...

[Sic throughout]

[50] On Section C (competencies and expected behaviours) of the mid-year review, the grievor received ratings of “Competencies demonstrated to date indicate need for improvement” for “Thinking things through” and “Showing initiative and being action-oriented”. Unhappy with the ratings, the grievor wrote:

I feel that these are not appropriate scores for my action and initiate not on track, nor my thinking things through. I feel these could be seen as reprisal for asking for more analysis, as I felt that my work is not assigned correctly for my field and somebody getting promoted to the level above me, a very similar job, so that I felt that there has not been a fair allocation of work.

...

I have thought things through as I have not approached changes that would make the sampling more efficient for me as we are changing in a few months and there are other priorities, such as the production, cleaning up directories and documenting work. By June, only two of us had done changes and the other was on the committee; as well, I was the first to put my documentation on the shared directory.

...

I also have thought through when employees are not kind to the future, by not responding. For example, when the deadline was discussed in my cubicle, I informed the person above me that this was not appropriate to be discussing this (private issue) there. I have thought of the long term implications of not standing up for

myself versus being submissive in these evaluations; due to experience, I felt it was necessary to say something.

...

I fear this is reprisal for going above when I feared not having the experience that would leave me vulnerable to layoffs and to any re-organization to IBSP.

...

[Sic throughout]

[51] Ms. St. Germain testified that the grievor had linked farm financial data; doing so had not been required and had not been discussed. According to Ms. St. Germain, the need to link data pertaining to the fruit and vegetable industry, isolating grape growers, had been repeatedly discussed with the grievor. It seemed to Ms. St. Germain that the grievor was simply unable to perform the necessary analysis to arrive at a satisfactory definition of the data set that was required to undertake the Cost of Production project. Her inability to conduct the necessary research and analysis, according to Ms. St. Germain, was one of the clear areas in which she obviously fell far short of the standard expected of an economist classified at the EC-04 level.

[52] Ms. St. Germain testified to the need for an employee at the grievor's group and level to be able to take the initiative to study a particular industry, prepare and organize data, evaluate the quality of the data, identify problems with it, and propose solutions so that it may be interpreted in the context of the particular aspect of the industry under observation. The grievor was not meeting those expectations.

[53] Ms. St. Germain referred to section 6 of the work description for the grievor's group and level, entitled "Research and Analysis", as follows:

Analyzes and synthesizes geographic, demographic, social, economic and/or labour market characteristics and prepares profiles and forecasts.

Reviews the development of new subject-matter methods, concepts and definitions and conducts studies and analytical projects to improve existing surveys and data.

Analyzes current collection, processing, editing, compilation and presentation methods and procedures to ascertain their relevancy and to determine the need for modification or replacement with alternative systems, methods and procedures.

Interprets program and user needs for statistical information, assesses the suitability of existing data products and services and translates them into a concrete, timely and affordable product.

Reviews the results of projects and surveys in order to provide interpretation and analysis on subject-matter concepts and definitions, survey methods, statistical applications and techniques used.

[54] As a result of the grievor's unsatisfactory progress on the Cost of Production project and the ATDP from April to September, 2015, Ms. St. Germain decided to formally place the grievor on Action Plan 1.

[55] Action Plan 1 was scheduled to run from September to December 2015. Its subject matter was the continuation of the two projects, with Ms. St. Germain to remain as supervisor of the Cost of Production project and Mr. Paju to remain as supervisor of the ATDP.

[56] The grievor strongly objected to the implementation of an action plan. A meeting was set for Tuesday, September 22, 2015, to implement it. Both Mr. Paju and Ms. St. Germain testified to the grievor's reluctance to attend. In an email dated September 17, 2015, at 2:17 p.m., the grievor wrote, "I will have to get back to you then about the date and time, if I can make it. I will be bringing in a union representative; I feel I am not being heard."

[57] Ms. St. Germain replied as follows at 4:01 p.m. the same day: "the meeting is set for Tuesday, 10:30-11:30. Note it is not an optional meeting, you are required to attend."

[58] The grievor immediately complained of harassment.

[59] The following day, September 18, 2015, Mr. Peterson, the director, replied by email, stating in part as follows:

...

Regrettably, the meeting with your supervisor and chief cannot be postponed. They need to give you the time necessary to improve before year end.

...

I encourage you to work collaboratively with your supervisor and chief, as the goal is to ensure you receive every opportunity to help you succeed.

...

[60] The meeting finally took place on September 22, 2015. Action Plan 1 was to run from that date to December 22, 2015. Since the grievor had not completed either the Cost of Production project or the ATDP to the satisfaction of either Ms. St. Germain or Mr. Paju, those two projects were to be the focus of Action Plan 1.

[61] A template was designed to track the grievor's performance on the two projects. On Monday of each week, she was to submit an email providing a description of the work to be conducted during the week, and on Friday of every week, she was to submit an email with a list of tasks she had completed.

[62] Mr. Paju and Ms. St. Germain each testified to the grievor's difficulty meeting the deadlines that had been set for tasks. They both testified that she always seemed to have an excuse for missing deadlines and that she would refuse to accept responsibility for not meeting them. For example, each testified that she reported certain technical difficulties with the Statistical Analysis Software (SAS) that none of the other employees seemed to have.

[63] On October 24, 2015, the grievor provided an outline of the Cost of Production project to Ms. St. Germain entitled, "Proof of Concept". Ms. St. Germain testified that the grievor's work on the outline was unsatisfactory because it seemed to betray a lack of understanding of the project. The grievor opened with the sentence, "The survey data was merged to the IBSP (currently a test file) ...", which Ms. St. Germain testified was wrong, because it was actually merged to the Agriculture Tax test file. This betrayed the grievor's lack of understanding of the data.

[64] Ms. St. Germain provided feedback to the grievor in the form of comments and observations written on the draft copy of the project. Many of Ms. St. Germain's comments are to the effect of, "not clear what you are trying to explain", "not relevant", or "what are you trying to say?"

[65] The grievor responded to many of Ms. St. Germain's comments, using the "Track Changes" feature of Microsoft Word, in a version of the Proof of Concept document in which she explained what she had written or had intended to convey.

[66] Ms. St. Germain and Mr. Paju both testified to discussing, near the end of December, 2015, the prospect that the grievor would continue to work under Action

Plan 1 into the coming year because they both felt that she had failed to demonstrate the level of analytical proficiency expected of an EC-04.

[67] On December 31, 2015, Ms. St. Germain reported on the grievor's progress to Mr. Peterson, as follows:

Mike and I have been meeting with [the grievor] regularly. She is making some progress... I think it is best to continue with [sic] work plan until the end of March to ensure improvements continue. There is still reluctance on the part of the employee to accept feedback and direction.

Mike and I have noticed there is still some issue with incorporating comments or accepting feedback. When I provided her with comments on the proof of concepts [sic] paper instead of incorporating my comments or suggestions there were comments throughout the paper as to why she disagreed with the comments. I had to ask her to clean up the paper and remove those comments. I still have to review the outcome of that paper.

...

[68] On January 6, 2016, Mr. Paju added to Ms. St. Germain's comments, copied to the Director, Mr. Peterson:

On the production side, she continued to run the programs to select the monthly T2 population. This is a repetitive task that she has done for many years which takes about three days per month. She had issues with almost every monthly load. These have been pointed out to her in our bi-weekly meetings in the context that; even though some of these errors are minor, it is important that she tries to improve on checking her work, being accountable, etc ... which is part of her action plan. Like Cindy mentions below, there is still a reluctance accepting any criticism of her work....

...

[69] In reporting on the progress of the ATDP, Mr. Paju wrote, in part:

[The grievor] needs to improve on taking ownership of issues that arise in her day to day work activities rather than redirecting them. Often she identifies technical issues or other things that are the cause of the problem and reacts rather than taking the time to look at other possibilities first, re-evaluating the situation and coming up with some options first before going to her supervisor.

Since implementing her action plan, she had had the opportunity to demonstrate better judgement in completing her T2 production tasks independently; but her progress to date does not reflect that she is working consistently at her expected group and level.

...

[70] Ms. St. Germain reported regularly on the grievor's progress in the context of the Cost of Production project. One of the specific areas of improvement targeted by Action Plan 1 was "Ability to analyse [sic], draw conclusions and make recommendations." Ms. St. Germain wrote, in part:

...

The early draft of the grape project required more direction than one would expect from an EC4. [The grievor] required direction as to how to structure a paper....

...

[The grievor] delivered the report on Dec 22. [The grievor] made an effort to prepare an analytical paper and did bring interesting facts about the industry and was able to illustrate data in tables with limited analysis. However the paper had errors and inconsistencies and it was difficult to follow and understand the points being made.... The initial review of the next version of the paper indicates that there is still a lack of logical order and structure, and there is an issue with sentence structure along with wrong titles in tables ... more work is required and the paper is not yet at the expected group and level.

This project is still on-going [sic].

[71] Another area was entitled, "Initiative". Ms. St. Germain wrote:

...

[The grievor] could improve her initiative by providing ideas or examples when requesting direction. For example she asked who the audience of the grape project should be. I would expect someone illustrating initiative would provide suggestions of the audience based on the research of the data available. When it was suggested a general audience she again could have provided examples of what she thought a general audience would be as opposed to asking for more details. One aspect of the grape project that [the grievor] was missing was to clearly understand the data and potential findings...

[72] Another area was entitled, "Judgement", about which she wrote:

...

[The grievor] *at times still sends irrelevant information mixed with relevant information in emails. This can cause confusion in trying to understand the point she is trying to get across in the email.*

...

At times [the grievor] can be defensive when asked to explain an issue or if she is questioned about information she is discussing....

[73] At fiscal year-end, which was February and March of 2016, Ms. St. Germain, in consultation with Mr. Paju, concluded that the grievor's performance had not yet reached the level expected of an EC-04, despite the close supervision provided during Action Plan 1, so they drafted a new action plan (Action Plan 2). A meeting was scheduled for March 1, 2016, involving the grievor, Ms. St. Germain, and Mr. Paju, the purpose of which was to discuss the implementation of Action Plan 2.

[74] The grievor opposed the implementation of Action Plan 2 and was upset about the comments she had received from Mr. Paju and Ms. St. Germain on Action Plan 1.

[75] Mr. Paju wrote some notes about the March 1 meeting, including the following observations:

...

- *[The grievor] said she will take control of the meeting, not us, starting with the action plan (AP) that stops now.*
- *She was visually upset and agitated.*
- *She vented about the comments on the AP [Action Plan]*
- *She felt that they were harassing and wanted them to stop now.*

...

- *She wanted it all to change and will not proceed unless [the action plan] is removed.*

[76] Since the meeting did not go well, another attempt was made to meet on the following day. Unfortunately, the results were similar. Mr. Paju's notes of the March 2 meeting included the following observations:

...

- *Entered room and [the grievor] still showed physical signs that she was agitated and upset about the [action plan] meeting*
- *She said the action plan (AP) is disrespectful and inappropriate.*

...

- ... *This is not her problem and she is not going forward.*

...

[77] Mr. Paju testified that at that point of the meeting, the grievor demanded to see his notes. He refused. He stopped writing notes. After the meeting ended, he jotted down a few notes about what happened in the remainder of the meeting. His observations include the following:

...

- *Cindy tried to get back on track but [the grievor] insisted on having time to record her thoughts which were basically a dictation of what she was thinking (out loud). This went on continuously for the rest of the meeting. She would speak out loud and write what she was saying, then tear the page off and continue.*
- *Cindy said that we can't continue the meeting like this and she could record her comments in the AP after.*

...

- *She kept writing while she was talking out loud. She made comments about the process and freedom of speech. She redirecting things to Cindy (us) - that you said this, etc. At one point she said to Cindy - I am not going to be made a slave.*
- *Cindy took offense to that comment and told [the grievor] that she was being disrespectful and said that she had never said that to her. [The grievor] did not say what? We restated what we had just heard her say and she denied that she had even said it - even though she had said it only 30 seconds earlier.*

...

- *Cindy asked again if she was willing to hear our comments. She kept writing everything that was being said including her thoughts which she said out loud.*
- *Cindy told her that it seemed that she did not want to follow the process so the meeting was going to end.*
- *We left the meeting room at about 940....*
- *Overall, [the grievor] was disrespectful throughout the meeting and showed some signs of aggression.*

[Sic throughout]

[78] Ms. St. Germain made similar notes, which were also entered into evidence.

[79] Mr. Peterson testified to hearing immediately from Mr. Paju and Ms. St. Germain about the grievor's behaviour during the meeting. On March 8, 2016, he issued a letter of expectations to the grievor that reads as follows:

...

Recent events indicate that there appears to be a need to outline certain work expectations. The purpose of this letter is to provide you with guidelines to that effect. These guidelines are effective immediately and are in effect until further notice. They are as follows:

BEHAVIOR

- 1) *You will comply responsibly with all instructions and directions from management in a timely and cooperative manner, consistent with your obligations as an employee, and accept management decisions respectfully. Directions from management and invitations to meetings should not require lengthy negotiations or debate;*
- 2) *You will respect the chain of command by addressing work matters first within your division with Mike Paju and Cindy St. Germain and subsequently with [name omitted] and, if necessary, with me. Even in cases of significant differences of opinion, particularly those regarding your performance, you need to respect the managerial hierarchy;*
- 3) *You will keep your manager regularly and pro-actively advised of progress on your work and respect all related deadlines set by management for your work;*
- 4) *You will communicate only as authorized to obtain information to undertake reviews or to acquire information required for the work of the Bureau and refrain from sending complaints and commentary regarding your performance evaluations and action plans with others, with the exception of: the chain of command and their representatives; your representatives; and in the case of harassment complaints to a Harassment Prevention Officer.*
- 5) *You will work in a co-operative and collegial manner with your colleagues, respect their input, and share your expertise and assistance in a timely manner;*
- 6) *You will organize your work to facilitate the success of the team as a whole and organize your work efficiently to meet deadlines consistently and regularly and without error; and*
- 7) *You will present work and recommendations to the manager early enough to permit sufficient time for full discussion to resolve outstanding issues;*

We consider this matter very serious. Please be advised that failure to comply with any of these guidelines may result in disciplinary

action, such as, written reprimand, suspension, demotion, or termination.

I am confident that these guidelines will contribute to resolve the current situation; I wish to assure you that I remain available to discuss any concerns you may have. Please inform me if you have any medical conditions which could impact your work performance in order that we can take appropriate action to accommodate your specific needs.

I also wish to reiterate that you may reach the Employee Assistance Program (EAP) at the following phone number... The EAP constitutes a professional service that aims to improve the well-being of employees who are faced with work related or personal problems and is available 24 hours a day.

The situation will be closely monitored. We will meet again on a later date to review your adherence to the expectations outlined in this letter.

...

[Sic throughout]

[80] Mr. Peterson testified to the grievor's tendency to email her complaints to several people in the office. He warned her to stop doing this, and to respect the chain of command.

[81] Mr. Paju and Ms. St. Germain continued to attempt to meet with the grievor to discuss the implementation of Action Plan 2, in an effort to improve her performance. On March 9, 2016, the grievor was emailed a copy of it.

D. Year-end performance assessment for fiscal 2015-2016

[82] On March 30, 2016, Mr. Paju and Ms. St. Germain completed the grievor's year-end assessment. In Section B (work objectives), they assigned her a rating of "Did not meet", meaning that she failed to meet expectations for the 2015-2016 fiscal year. On page 5, Ms. St. Germain made these comments:

[The grievor] has shown willingness to work towards illustrating her ability to analyse [sic] and draw conclusions and make recommendations. However, progress is not at her expected group and level. [The grievor] needs to improve her initiative by providing ideas or examples when requesting direction. She showed good judgement in outlining her work plans and attending the biweekly meetings, but at times still sends irrelevant information mixed with relevant information in emails causing confusion in trying to understand the point she is trying to get across or the direction of the paper. Throughout the project she expressed her concerns regarding the assigned deadline but given

the progress that had been made on the two documents it was felt by management that ample time had been provided.

[83] The grievor's supervisors testified to recurring errors in the grievor's work and to documenting the need for her to check her work for accuracy.

[84] Section C of the year-end assessment rates core competencies and expected behaviours. The grievor was assessed as "Did not meet" expectations. Under the heading "Demonstrating integrity and respect", Ms. St. Germain wrote the following:

Since the implementation of her action plan last September, [the grievor's] behaviour towards her superiors is poor. This is evident during her bi-weekly action plan meetings where she seldom accepts feedback about her work and often becomes defensive redirecting blame to others, including her supervisors. She is disrespectful and confrontational towards her supervisor. This type of behaviour is also evident in her emails.

[85] Under the heading "Thinking things through", she wrote this:

[The grievor] is encouraged to think things through before reacting to a situation. She relies heavily on direction and guidance from her supervisors. For the analysis project, [the grievor] has difficulty synthesizing and linking relevant information together and difficulty expressing her ideas in writing in a logical, clear and concise way.

On the production side her attention to the quality and accuracy of her work is inconsistent. She does not demonstrate that she can consistently ensure that her work is done completely and correctly, by being exact, correct and precise.

[86] Under the heading "Working effectively with others":

[The grievor] has made an effort to make progress on the grape project but has shown difficulty taking advice and direction from her supervisor of her analytical project. At times she is not willing to accept comments and often challenged them. Through emails she also demonstrates unwillingness to be accountable for her actions, redirecting issues to someone or something.

[87] Under the heading "Showing initiative and being action-oriented", she wrote:

[The grievor] did show initiative in terms of organizing her work and providing weekly outlines of her tasks and work accomplishments. However, [the grievor] needs guidance and direction on her analytical project. She frequently asks for the best

way to do something rather than trying to figure it out or trying to do it on her own. Quite often she follows advice or direction verbatim, rather than using it to build on her own analysis.

She seldom takes ownership or responsibility for her errors and rather than taking corrective action she redirects the blame to something or someone. She has difficulty recognizing and identifying the best available options to make appropriate decisions and when her judgement is questioned she gets defensive or redirects the issue.

[88] The grievor responded, again at great length. Her comments included the following:

When things were not working, I was blamed & told I had to be perfect. It would be defensive out of context; I was trying to stop the negativity to me, my work & used collaborative approaches, advising....

...

Its not who I did not work effectively with others; the choice of using authoritative & threatening method that was inappropriate for a professional with my experience, technical skills & knowledge, made things worse....

The project had constantly contradicting things; work independently as was expected at my group and level, then told not going to the subject matter person enough ... Cindy refused to work with me.

...

Mike didn't work with me either, continuously checking up on my old boss with what I said, dismissing my input & refused providing programs to check the many datasets; the programs were too complex for my experience. He listened to others input; he talked to me in an abrupt tone.

I am unable to be initiative & action orientated; the action plan shows that. The constraints that Cindy has put on the article & constantly changing ideas is why it isnt being meet. I was criticized for not listing all the variables; there is no relevance to my group and level for this input. This is excessive negativity. I went from 1 paper to 2. Mike did not include me in the loop by meetings or forwarding minutes to be able to initiate data analysis.

...

SAS issues have been on-going; it often says it save & does not; this makes errors....

...

[Sic throughout]

[89] The grievor's overall performance rating for 2015-2016 was "Did not meet work objectives". The grievor filled another page with comments similar to those in the preceding paragraph, adding, "It would be a grave injustice for the evaluations of 2015 and 2016 to stay as they are, especially considering my age & experience." She also added this:

...

I felt throughout my career that being a female economist has a lot of challenges based on gender; in areas where most chiefs are men, my experience is we tend to not get promoted as quickly and the economic degree is not welcomed; in the GCWCC vb, men didn't set to girls even the good ones.

This tool has made me feel a person without rights; it has made me feel that I am not being evaluated fairly, my work and personal strengths are disrespected in a permanent file. I have been treated like a girl.

I want the issues from Sept. and March, 2015 to be addressed, then the concerns here to be addressed, so I am empowered and treated like a valued professional.

I consider not getting the secondment based on this situation is grossly unfair, not equitable and it is not transparent. These issues needs to be addressed. I should not need to have somebody behind me to ask for respect.

My action plan comments asking for a harassment free environment and team building in Sept. were not able to be saved, neither are the comments saved now, yet I am given a bad score for technical issues. Given what has been said & I've lost a job offer at a higher pay, this is cruel and unusual punishment.

[Sic throughout]

[90] The year-end assessment in March of 2016 called for an action plan. Mr. Paju and Ms. St. Germain worked together to draw one up. The grievor strongly objected to this course of action.

[91] A meeting to discuss the new action plan was set, but the grievor sent Mr. Paju (copying Ms. St. Germain and Mr. Peterson) a very lengthy email advising that she would not go ahead with the meeting. She said she was not being treated fairly.

[92] Mr. Paju and Ms. St. Germain testified that the grievor did not attend the meeting. In fact, no such meeting ever took place, and Action Plan 2 was never able to be implemented.

[93] The grievor met instead with Mr. Peterson, on April 7, 2016. Their meeting did not go well. In a letter dated May 24, 2016, he wrote, “At a meeting on April 7, 2016 you did not allow me to explain to you my concerns. You were agitated, defensive, argumentative and angry. You stormed out of my office threatening to get a lawyer.”

[94] Mr. Peterson sent the grievor home on April 7, 2016. On May 13, 2016, he wrote her a letter with the subject, “Fitness to Work Evaluation”, because he was concerned with the behaviour she had been exhibiting since being presented with a performance management plan. He reminded her that it is “... management who determines the performance expectations and whether or not they are being met.” He also requested that she obtain clarifications from her physician to determine if she was fit for work and if she had any limitations that would require accommodation.

[95] On May 24, 2016, Mr. Peterson sent the grievor another letter, advising her of his concerns about her medical well-being. He reminded her that several times, he had requested that she obtain an evaluation of her fitness for work. He advised her that she was not permitted to return to the workplace until a physician attested to her fitness to work.

[96] Several months later, on September 6, 2016, with a fitness-for-work evaluation that Mr. Peterson found satisfactory, the grievor attended a meeting with him to discuss her return to work. He provided her with a second letter of expectations about her comportment and her work in the office. It was essentially a repetition of the one issued to her on March 8, 2016. As before, the letter contained a paragraph that read, “We consider this matter very serious. Please be advised that failure to comply with any of these guidelines may result in disciplinary action, such as, written reprimand, suspension, demotion, or termination.”

[97] Mr. Peterson testified to his desire to provide the grievor with a fresh start. He removed her from the supervision of both Mr. Paju and Ms. St. Germain and placed her in the care of Etienne Saint-Pierre, whom Mr. Peterson described as his best employee.

[98] The purpose of this course of action, according to Mr. Peterson, was to raise the grievor's performance to the standards expected of an EC-04. To that end, Mr. Saint-Pierre was to implement Action Plan 3, which was a three-month performance-management tool that would require regular mentoring, reporting, and feedback on each of the four areas of required improvement, as follows:

- the ability to analyze, draw conclusions, and make recommendations;
- initiative;
- judgement; and
- working effectively with others.

[99] Mr. Saint-Pierre began his career with Statistics Canada in 1995 and became an assistant director in its Agriculture Division in June of 2016. He testified to having had no knowledge of the grievor before meeting her in September of 2016, but he did read her previous action plan (Action Plan 1) to become familiar with the areas of improvement she needed to focus on.

[100] Mr. Saint-Pierre testified to the analytical work required by the projects in Action Plan 1, stating that the simplicity of the Cost of Production project made it just barely suitable for an employee at the EC-04 level. In fact, since the results of that project were important to the Agriculture Division, he wanted to see the project completed properly, so he assigned it to a new employee at a lower level, a recruit at the EC-02 level.

[101] In consultation with Mr. Peterson, Mr. Saint-Pierre decided to use a project in the new action plan (Action Plan 3, since Action Plan 2 was never implemented) that was even simpler. His goal was to identify specific areas of the analytical process she might be having trouble with.

[102] Statistics Canada has a special division that collects information on the most complex farms in the country. The data set is known as the "Large Agricultural Operations Statistics" or LAOS. The project at the core of Action Plan 3 involved making an assessment of the differences between data collected under the ATDP and the Census of Agriculture as applied to the LAOS. The grievor was expected to identify

and categorize the causes of the differences, to reconcile them, and to recommend how to improve the process.

[103] Action Plan 3 was scheduled to run from mid-September to mid-December 2016. The grievor and Mr. Saint-Pierre were to meet weekly to discuss her approach and issues that arose, and she was to be evaluated monthly.

[104] The first step of the action plan was to prepare a project outline, due October 24, 2016. The grievor delivered it on time, with following remarks:

...

I request due to the subjective standards and remarks made that this report be evaluated for subject matter content in a meeting to ensure that the person who is reviewing it is giving me honest feedback that has no input from others. This is addressing the value of addressing the impact of the reviewer on my career; it is easy to go and ask a person who does not like me to give input. I want it directly from the person involved and not a team of staff who are using past experience.

...

[105] Mr. Saint-Pierre testified to a recurring theme with the grievor's written work in that she would frequently include many personal opinions and editorial comments, none of which would have anything to do with the project. She persisted despite his many reminders about the unprofessional and inappropriate nature of the practice.

[106] After reviewing the project outline, Mr. Saint-Pierre emailed the grievor the following on October 25, 2016:

...

The goal of this deliverable is to ensure that I can provide you with some guidance with the project and make sure that the approach used is conformed [sic] with the expectations.

The document needs to be re-worked. It is incomplete. I have inserted my comments in the document attached. As well, personal opinion should not be included in such a document. Please keep these comments outside the project outline.

...

[107] She responded as follows, in part:

... I requested a balanced approach to evaluation of my work over a year ago. If you wanted a specific outline, you should have told me or e-mailed me. I have done outlines within and outside STC. This is not assisting me in meeting the deadlines...

[108] On October 18, 2016, one month into Action Plan 3, Mr. Saint-Pierre evaluated the grievor on each of the four areas of improvement. With respect to “Judgment”, he noted, “I have mentioned to [the grievor] that I have yet to see her propensity to propose solutions and recommendations vis-à-vis hurdles and problems.”

[109] With respect to “Working effectively with others”, he noted that she was respectful of colleagues and their workload.

[110] With respect to “Initiative”, he wrote, “I told [the grievor] that I wish she will rely less on her colleagues to come up with ideas and solutions and show more initiative to influence this project.”

[111] With respect to the “Ability to analyse [sic], draw conclusion [sic] and make recommendations”, he wrote this:

Improvement to that competency need to be demonstrated. [the grievor] does not seem to have clear strategy, method and plan defined to achieve the goal of the project. As a supervisor, I tried to segment the project into mini-deliverables...without success so far....

[Sic throughout]

[112] He testified to her negative reaction to this feedback. She frequently asked him to change his comments. He did not change them.

[113] On October 28, 2016, the grievor supplied Mr. Saint-Pierre with another draft of her project outline. On November 4, 2016, he provided her with his feedback, noting at several points in the outline how she seemed to be drawing conclusions without any evidence to back them up. He found it difficult to understand where she was going with the project because of the lack of precision in her writing. He could tell that she was struggling because the outline was not clear as to what the project was about.

[114] The second project review took place on November 17, 2016, one month before the deadline. Mr. Saint-Pierre testified that the first sentence of her introduction

betrayed a lack of comprehension of the study's purpose, even though he described it as a relatively simple project for someone at her level.

[115] Using Track Changes, Mr. Saint-Pierre provided a total of 40 recommendations and comments to the grievor.

[116] On November 25, 2016, he provided her with his two-month assessment of Action Plan 3. With respect to “Ability to analyse [sic], draw conclusion [sic] and make recommendations”, he noted in part as follows:

...

... There was no indication on the methodology used to prioritize the 800 or so units that are part of the projects. There were lack of clarity on key elements, such as the scope of the analysis ... and presumptions instead of evidence. [The grievor] is having a hard time to define by herself an analytical strategy for this project....

... There is a general lack of clarity and accuracy in the document... The basic concepts (coverage, BR allocation, Value transfer, concept measure by the CENSUS) for this project does not seem to be clearly understood.

There is a general lack of thoroughness in the documents submitted that will have to be addressed when the final document will be presented.

[Sic throughout]

...

[117] With respect to “Initiative”, he noted the following:

... There is definitely a clear effort to show initiative over the last month....

I still wish [the grievor] will [sic] show more initiative to influence the direction of the project and provide more input to define a clear strategy, method and plan defined to achieve the goal of the project... I'd also like [the grievor] to take actions, verify the info provided and derive her own conclusions.

[118] With respect to “Judgment”, he wrote this:

... Written communication provided so far does not consistently show relevant factual information. There are incorrect statements, lack of clarity and presumptions. Comments have been provided to ensure this is corrected for the final report.

In the weekly reports, the recommendations / solutions proposed to the problems identified are too often opinions that are not related to the deliverables of the project....

Most of the time, the solutions has [sic] to be prompted from the supervisor. There is unfortunately a propensity to focus on assigning a responsibility to the problem rather than finding concrete solutions.

[119] He added this with respect to “Working effectively with others”:

... [The grievor] works in a co-operative, respectful and collegial manner with colleagues and management, respect their inputs and assist in a timely manner. [The grievor] does not accept easily comments from her supervisor, though it has been better on that aspect in the last few weeks.

[Sic throughout]

[120] Mr. Saint-Pierre testified that the grievor became increasingly anxious as the deadline for Action Plan 3 approached. On Friday, December 9, 2016, she emailed him, stating, “I still need to come in this weekend. Having you know that you are violating the collective agreement, that my job is in jeopardy and that I have to plan for my fighting to have it back, please advise me what you want ...”. She attached a document entitled, “Recommendations”. It had 17 numbered paragraphs on 3 single-spaced pages. Paragraph 2 has the subheading “Increase the sharing of information to all staff” and contains four paragraphs, of which the last two read as follows:

By not allowing free access to information, there is room for deviant behaviour, such as bullying and thwarting staff from getting their job in a timely manner. It takes too much time away from the tasks at hand and encourages staff to seek favour ship rather than build teams. Economists have been passed by in sections in some division, while those who do not have the degree are supported more and able to be promoted.

The author would have had a clearer paper had it not been for staff thwarting efforts, such as not be giving final data in a timely manner, staff changing their permission group so they are set up but then unable to get the data without understanding why. It took three weeks to get the name of the dataset and to date, the dataset has not been given to the author. This is supported by some managers in that they protect the staff they like and demean and devalue work of others.

[Sic throughout]

[121] Paragraph 14 reads as follows:

14. *There was a lack of compassion for not being able to get the data; the author asked for weekend access and this was denied. This was after many issues with the computer, including crashing of MS Excel while doing analysis, changing a supervisor while they changed [sic]*

[122] Paragraph 15 states:

15. *Financial remuneration has to be in line with the individuals' value to the agency. There appears to be politics that exclude Canadian white women economists. They are not valued but seen as competitors, are flirted with and those women without this degree are given opportunities that they are not. The evaluations have not had any successful recourses, giving managers too much power. This is not good for the data and lets me believe that there is a need for an external audit of all data.*

[Sic throughout]

[123] Paragraph 16 states as follows:

16. *There appears to be direct discrimination by the staff against women economists in the Agriculture Division. It is something a good manager will protect; if you get a bad manager, they will encourage it.*

[Sic throughout]

[124] Paragraph 17 reads:

17. **Values in the Work Place** *All staff who wish to move be granted a CAD. I felt that there was motivation by staff not to cooperate and it hurt the project. There could have been better recommendations. The staff seemed encouraged to provide information vaguely and at the last minute; there has been expression over the years that the production side of the EC category 'rule'. Thus, the data qualities suffers as staff have no recourse for issues, have to put up with harassment type behaviour and human resources literally look the other way. Initiatives are being given for the use of employees being able to work away from their desk but I could not come in for a couple of hours to complete the project despite the way people have not provided information I need. This is unnecessary stress; this is an abuse of power. I consider if I get fired that all those involved in this year owe me \$20,000 each payable by December 15.*

[Sic throughout]

[Emphasis in the original]

[125] Mr. Saint-Pierre reviewed the grievor's draft recommendations and provided feedback on her observations about the project. He stated, "Make sure your statements are well substantiated, backed with evidence, factual information and data."

[126] As for the rest of the grievor's comments in her draft recommendations, Mr. Saint-Pierre wrote, "A significant number of your recommendations have nothing to do with the project itself, but are more the expression of personal opinions that are irrelevant for an analytical report." Mr. Saint-Pierre testified that most of the grievor's recommendations were merely a list of complaints about the workplace.

[127] On Friday, December 16, 2016, the grievor submitted her final draft of the paper. Mr. Saint-Pierre and Mathieu Thomassin, the director of Statistics Canada's Agriculture Division, reviewed it. Both testified that her work was unsatisfactory and below the standard expected of an EC-04. In an email to Mr. Saint-Pierre dated December 17, 2016, Mr. Thomassin stated, "[translation] The biggest problem with the paper is that [the grievor] draws conclusions without any data to support her claims/conclusions. I made a few comments in the document."

[128] The assessment of Action Plan 3 was provided to the grievor on December 20, 2016. In all four areas of improvement, the rating was the same: "Did not succeed." With respect to the first area of improvement, which was the ability to analyze, draw conclusions, and make recommendations, Mr. Saint-Pierre wrote this, in part:

[The grievor] worked very hard and put a lot of efforts in the project and definitely demonstrated a profound willingness to succeed with the project. The final report and presentation have been submitted on time. Unfortunately, the results and the report provided tend to indicate that [the grievor] did not demonstrate a sufficient ability to analyse data, assess methods, draw conclusions and make recommendations during this project. The objectives of the project were not met.

...

[The grievor] has not been able to define an efficient approach to analyze the data. She struggled to identify the right sources of data to use. Her supervisor defined a 7 steps approach for her to follow to complete the project, asking her to do one step after the other to help her keeping the focus on a logical sequence of tasks. This was more or less ignored.

...

[Sic throughout]

[129] With respect to the second area of improvement (Initiative), he wrote:

There was definitely an effort by [the grievor] to demonstrate initiative and autonomy in her project. [The grievor] proposed various approaches to look at the data and organize the work for the project. Unfortunately these initiatives did not lead to successful outcomes in the project, as they were often not clearly aligned with the goal of the project.

...

[130] With respect to the third area of improvement (Judgement):

Despite multiple reminders from her supervisor, [the grievor] presented frequently irrelevant information in her communication and meetings related to the project. Concerns about the sharing of information by her colleagues, management of permissions, access to data, perceived unfairness of competition process, perceived unfairness of her action plan, perceived lack of support, perception and opinion on management practices were mixed with details specific to the project. A precious amount of time in the project has been spent documenting and expressing these concerns.

...

[131] The fourth and final area of improvement was entitled, “Working effectively with others”. He wrote in part as follows:

...

It became more difficult to interact with [the grievor] close to the deadline of the project, as she clearly felt the pressure of not succeeding in her Action plan. In her e-mail communication and meetings, [the grievor] repetitively focused on her personal situation, perceived lack of justice and repetitively questioned the management skills and fairness of AG Division. This has to be improved.

...

[132] The grievor disagreed with the assessment of Action Plan 3 and demanded that it be changed, but Mr. Saint-Pierre refused. He felt it was fair and accurate.

[133] Mr. Thomassin testified to meeting with Mr. Saint-Pierre to discuss their approach to the grievor in light of her failure on Action Plan 3. Mr. Thomassin decided

to give her another chance with another action plan. They agreed to make this project simpler still, to give the grievor the best possible chance to succeed.

[134] On January 10, 2017, Mr. Thomassin met with the grievor in his office and presented her a “Three Month Warning” letter, which reads as follows:

This is further to your meeting of December 19, 2016 with myself and Étienne Saint-Pierre concerning your performance for fiscal year 2016-2017 and more specifically the results of your action plan for the period of September 12, 2016 until December 16, 2016.

Given that you have now received 2 consecutive ratings of succeeded minus for your 2014/2015 and 2015/2016 performance evaluations with no improvement demonstrated, the purpose of this letter is to inform you of the consequences of continued failure to meet these requirements.

During your meeting of December 19, 2016 where you were provided feedback on your most recent action plan, a discussion took place between you and Étienne Saint-Pierre concerning your performance at the EC-04 group and level. It was explained to you that the deficiencies observed continue to be in the areas of ability to analyse [sic], draw conclusions and make recommendations; initiative; judgement; and working effectively with others. These are all key aspects of your job that you must demonstrate effectively.

Since April 2015, management has encouraged you to communicate any concerns or issues you were facing regarding the action plan and to identify any assistance, feedback, or training that you required in order to help you improve. You were also encouraged to advise your manager if there was anything else they should be made aware of that may be affecting your performance, which could be beyond your control, so that appropriate action could be taken to accommodate you.

You have been informed of the requirements of your position by your supervisors, through the establishment of goals. Your work has been monitored on a regular basis and you have been provided with regular feedback. Management also met with you regularly to discuss your progress and to ensure that the action plan continued to be relevant or if it needed adjustment. In addition, you were provided with on-the-job training and support, particularly by Étienne Saint-Pierre.

I hereby inform you that a meeting will be held 3 months from the date of this letter (January 10, 2017). If your performance has not improved to the point where you meet the requirements of the position, I may proceed in demoting or terminating you from your position for unsatisfactory performance, in accordance with section 12. (1)(d) of the Financial Administration Act.

Once again I ask that you please advise me if there is anything I should be made aware of that may be affecting your performance which is beyond your control so that we may take appropriate action to accommodate you.

Please note that the Employee Assistance Program is available to you should you feel the need for their support.

...

[135] At the January 10, 2017, meeting, Mr. Thomassin and Mr. Saint-Pierre advised the grievor that she was required to attend a meeting on January 13, 2017, to go over the requirements of Action Plan 4. She refused to discuss any aspect of a future action plan until the assessment of Action Plan 3 was changed.

[136] The grievor took issue with the January 10, 2017, meeting and emailed Mr. Saint-Pierre the following (copying Mr. Thomassin), in part:

...

Just a comment about our discussion; it is nice to say that one does not remember something but the reality is that if a group of men all do this to a woman, then the group becomes the problem and not the person supposedly saying things said to them are not good. I always found in my career that honesty and politeness have developed good working relationships and esteem from those I work with.

In relationship to the other person doing a similar project, could either of you e-mail me the e-mails that they got from staff about boundaries and not being given the information, with excuses as to why they did not supply it or was sent elsewhere? (Just the information of who and what, the content, time and dates.)

Was the other staff having their permissions changed or had to wait a few weeks?

Was their e-mails criticized rather than the person asked for information asking for more details? I would expect this if a person asked me for information, not judge my e-mail style.

Were they told that their project would not succeed?

Did they have their permissions played with so there were delays?

Were they told they would fail?

Did they have an action plan, spending hours on things related to that?

Was their input supported or were they put down? I asked for balanced input, I think I am due that.

Did the people they dealt with put them down, calling them names and then refusing the ICMO that resulted in this action plan?

Did they ask the previous managers for team building to address the issues with the people who did not provide answers?

I also noticed in my SAS books, that I preferred the one written by two women while my male boss preferred the one written by a man. Is this a factor in my writing style?

Did they get passed by for promotions in their section, with all the other junior staff with economic degrees but not those without?

...

[Sic throughout]

[137] Mr. Thomassin responded in an email, stating in part as follows:

...

I have a hard time understanding your points. As mentioned this morning, the meeting Friday is only about the next action plan. To make sure that you understand the project and what is expected. I encourage you to ask Etienne all the questions (clarifications) regarding this action plan...

[Emphasis in the original]

[138] The basis for Action Plan 4 was a project involving the reconciliation of provincial crop insurance data and Agriculture Division data, described as follows:

...

Agriculture Division is engaged in the process to increase its employment of administrative data to deliver on its current and evolving mandate to deliver relevant and timely information on the state and evolution of the sector in the most efficient manner possible. Employment of administrative data holds the potential to considerably reduce response burden, increase data quality and diversify data offerings.

A key factor in the application of administrative data to any program is the assessment of the coherence of the concepts and timeliness between the collected data and current statistical program deliverables. Once those foundational factors are established they can serve as a baseline to assess if and how the administrative data sets may be employed to deliver the agency mandate.

Statistics Canada has been collecting a subset of administrative data available from select crop insurance agencies for up to five years. This data has been employed within the census program for

data confrontation and validation and it will likely be placed in that role for the crops survey. Conducting a compressive coherence assessment between the crop insurance agencies data sets and then with the data requirements of the division is a key task.

...

[139] As with Action Plan 3, the following four performance areas were the focus of attention in Action Plan 4:

- ability to analyze, draw conclusions, and make recommendations;
- initiative;
- judgement; and
- working effectively with others.

[140] For each performance area, a detailed list of required actions was listed, and the grievor's responsibilities were articulated. Due dates for the project's stages were also specified, including biweekly meetings and weekly emails from the grievor stating the tasks accomplished over the week and those to be accomplished in the coming week. In her weekly emails, she was also obliged to note problems or issues and to come up with potential solutions.

[141] A copy of Action Plan 4 was provided to the grievor on January 10, 2017, and a meeting was set for Friday, January 13, 2017, to discuss it.

[142] On January 13, 2017, at the meeting with Mr. Saint-Pierre, the grievor interrupted his explanation of Action Plan 4 to present her version of the project brief in which she unilaterally extended deadlines and reassigned responsibilities. For example, for the required action of sending "weekly e-mails every Friday (starting on January 13th) with the list of tasks completed during the week, the tasks to accomplish during the next week and a list of problems and outstanding issues encountered and potential solutions and initiatives to resolve them", she reassigned responsibility from herself to Mr. Saint-Pierre.

[143] The grievor also rewrote certain aspects of the project brief, as follows (quoted verbatim):

...

Area of Improvement # 2: Initiative

1. *Employee has used information as guidance and take initiative to conceive, elaborate and realize activities build on suggestions provided. The supervisor is to recognize all initiative and to discontinue*
2. *Supervisor to stop threatening the employee and pay them their worth for their knowledge, experience and personal suitability.*
3. *Supervisor should provide enough information and support when the staff fail to provide information rather than reward staff. Supervisor to provide balanced input; the imbalance and negativity of this employees in the last three years is the most horrendous treatment I have seen in the private, public and not for profit sector. This needs to be addressed.*

[Emphasis in the original]

[Sic throughout]

...

[144] The grievor did not alter Mr. Saint-Pierre's "Required Actions", but she unilaterally reassigned responsibility for these tasks to him.

[145] Mr. Saint-Pierre testified to his frustration with the grievor challenging virtually every aspect of Action Plan 4. At their January 13, meeting, he insisted that the project brief remain as he wrote it and not as she amended it. He wanted her to take responsibility for her work. He did, however, agree to extend some of the deadlines.

[146] At the meeting, and in her version of the project plan for Action Plan 4, the grievor stated, "Employee is now on a term and expects to be paid at the EC-06 level."

[147] In her email dated January 13, 2017, which contained her version of Action Plan 4, the grievor stated as follows:

I have revised the Action Plan to address the issues that I have raised so we have a position of both sides before we move forward. It was said I agreed to the Action Plans but I have not; it was imposed on me despite the comments I made.

As a Canadian, you cannot expect me to just sit and not say anything while this is being done; this would go against our culture. This was supposed to be a fresh start; using the comments of others that are subjective is not acceptable.

This is what I expect to be discussed as an EC-04 who has been passed in ways not clear that follow TB guidelines due to comments from management, who may have been an EC-05 or EC-06 or even above if management in the past had not influenced managers to be more negative than they ought to be. This needs to be addressed.

As far as I am concerned, I am one of the best employees here.

...

[Sic throughout]

[148] Mr. Saint-Pierre testified that the January 13, 2017, meeting did not go well. He described the grievor as combative, and she constantly interrupted him. While explaining his expectations of her, he said that she stopped listening, took out her phone, and said, "I will record this."

[149] Mr. Saint-Pierre said he had had enough by that point, and he ended the meeting. He made notes of what had happened, which he emailed later that day to the director, Mr. Thomassin.

[150] Mr. Thomassin gave the grievor a written reprimand about her behaviour during the January 13, 2017, meeting, which reads in part:

This is further to our meeting on January 23rd in which you were presented with allegations of belligerent behavior during a meeting with your manager which is considered a breach of your letter of expectation. At this meeting you were given the opportunity to explain yourself in regards to your conduct during the January 13th meeting.

Management has clearly outlined their expectations in terms of your behavior at work. Although it has been discussed with you on numerous occasions, it appears that it is still difficult for you to comply with all instructions and directions from management in a timely and cooperative manner, and accept management decisions respectfully.

At the hearing, you indicated that you did not want to answer any questions without legal representation. I explained to you the purpose of the meeting and that I needed your side of what happened during the meeting with your supervisor. To most of my questions you indicated you did not recall. The information you did provide described situations and/or concerns you had in the past with your past performance evaluations and how you feel it is not fair, equitable, respectful or balanced. You were upset because your supervisor was presenting you with a new action plan as oppose to addressing the past performance evaluation. You failed to understand that the meeting was to explain to you what is expected of you with regards to work going forward and the necessity to succeed.

Considering all of the above and the fact that this matter has been discussed with you on several occasions, that you have b made aware of the importance of working collaboratively with your supervisor along with the consequences of not doing so, I have no

alternative but to impose discipline in order to stress upon you the need to correct your behavior. I hope that you will take this opportunity to reflect on the inappropriateness of your actions and ensure that this type of behavior will not be repeated.

...

[Sic throughout]

[151] The grievor signed and dated the letter and added, in handwriting, "I wish the harassment to stop. I find the behaviour of those above is harassment and HR stands by."

[152] In early February, Mr. Saint-Pierre invited the grievor to a meeting, set for February 10, to conduct a one-month assessment on Action Plan 4. She responded with a lengthy email that states the following, among many other things:

I wish to repeat what I have verbally advised you; that anything on the action plan is disrespect to me, as it is based on an evaluation which I feel is factually incorrect and does not follow the GOC values of fairness and equity in the process. There are no ways indicated to change the performance evaluation within our agency and that I consider this disrespect to me as an employee.

...

After 17 years as a loyal employee, I wish for respect and to be valued for my knowledge, experience and personal suitability. I felt my work was torn apart for my imperfections and a plan designed on biases that are not hard. I wish for back pay to amend to this from at least January, 2016 at the EC-05 level.

[Sic throughout]

...

[153] Mr. Saint-Pierre forwarded the grievor's message to the Human Resources department as requested, adding he would not change her previous evaluations or alter the terms of Action Plan 4.

[154] The one-month evaluation of Action Plan 4, according to Mr. Saint-Pierre, was mostly positive. He made the following observations:

...

-At this point I can see 3 major issues / hurdles in the project that I'd like you to develop and document options and solutions on:

1-Size of the file

2-Choice of criteria and measurement methods to assess the usability of the crop insurance file

3-Time constraint of the project

What are the options to deal with these three items? What are your recommendations? I'd like you to present clearly options and recommendations to address these 3 items very soon to make sure that you are on the right direction for the rest of the project.

[155] Following the one-month evaluation, Mr. Saint-Pierre continued to observe that the grievor was having difficulty with the project. He testified that since he knew the potential consequences should she not succeed, he began to help her more closely. On the weekly progress spreadsheet, he offered the following advice, in part:

As a general comment: the list here is not in line with what has been [sic] discussed last Friday at our meeting. The action items and tasks expected that we discussed are the following: 1) Document the justification of the Field Crop occurrence you will select (March / July); 2) you need to identify and understand the concordance between the crop insurance files and the field crop reporting series 3) I suggested that you develop a schedule to help you [organize] your time in accordance with the deliverables of the project (optional); 4) I asked you to develop for the 8 criteria that I provided a method to measure those criteria....

[156] Mr. Saint-Pierre testified that the grievor often used the weekly progress spreadsheet to write about her dissatisfaction with the workplace rather than to document her progress on the project.

[157] The second interim evaluation of Action Plan 4 took place on March 17, 2017. Mr. Saint-Pierre wrote as follows, in part, with respect to the first area of improvement, "Ability to analyse [sic], draw conclusion [sic] and make recommendations":

...

... After two months, I have not really seen concrete results coming from the analysis. Only one table has been presented to me so far and recently few graphs. Results and output should be interpreted and explained in the context of the project. [The grievor] needs to be more thorough in the interpretation of the data presented in relation to the project. I wish I would have seen more output and results at this phase of the project for the 8 criteria to assess.

Providing factual and accurate information is essential for this competency.

...

[158] With respect to the second area of improvement, “Initiative”, he wrote:

...

[The grievor] took the initiative to validate concordances with the Unit head from Commodities surveys and come to see me few times to validate some of her methods (concordance, % calculation) to make sure she’s on the right track. She’s also took the initiative to produce an outline of the project in the early phase. This is excellent.

On the other side, [the grievor] needed a lot of direction to determine the relevant criteria to use for the coherence analysis and to determine the measures to support them. I would have expected [the grievor] to be more proactive in suggesting approaches and ideas to the analytical portion of the project and have more impact on the direction of the project.

From now on, I’m expecting [the grievor] to be more autonomous to elaborate herself activities that will impact the direction of the project based on the suggestions I provided, especially to draw conclusions based on factual information and provide useful recommendations. At the same time, I encourage [the grievor] to show graphs, results, validate her options, approaches with me and her colleagues.

[Sic throughout]

[159] With respect to the third area, “Judgement”, he wrote:

One of the key components of this competency is your capacity to assess potential options and to choose the best one. The weekly reports specifically ask to report on problems encountered and potential solutions should be completed more diligently. More thorough updates have been formally asked. The information provided does not provide a clear description of the tasks performed, problems encountered and most importantly options and recommendations. It is not detailed enough and to often - as with your other forms of communication related to the project - accompanied with opinions or comments that are not relevant to the project itself but more related to your personal situation. Again, this should be avoided.

When encountering issues or waiting for answers, [the grievor] works on different tasks to keep the project moving.

The documents submitted are often presented as draft, general idea or present only vaguely the ideas and approach that will be selected. There is a general lack of ‘thinking things through’. This has to be significantly improved in the last month and particularly in the final report.

I would expect [the grievor] to provide options and recommendations to deal with the time constraint to finish the project and deliver a useful report with recommendations.

[Sic throughout]

[160] With respect to the fourth area, “Working effectively with others”, he wrote:

Communication has improved with [the grievor]. She is more cooperative and respectful with her supervisor and management in her communications. She’s been comprehensive in regards to the workload of colleagues she has consulted for this project.

[The grievor] has to respect the input of her manager in regards to her performance and take them into account in the conduct of the project.

[161] The grievor did not take this evaluation well. She emailed him the following:

...

As discussed, I will take an extra two weeks to do the project to deal with the administration that management has refused to collaborate on me and look for a new job next week. I am not okay with the refusal to go on a CAD, change my evaluation of March, 2016 and the fall. I have asked the heavy handedness to stop to no avail from those above you.

- 1. I asked you to change the analysis point as the analysis could not be done as I was busy with your demands on top of the key deliverables. Since you want published documents and this is not a normal repeating project or a part of my normal work, then. I am sure after IBSP changed subjects a few times, they would*
- 2. I find [she] needs to pay attention to the relevant criteria misleading; I was proactive, I sought. You said you encouraged me to go to other colleagues but in the past, I was told by colleagues my papers were good. Thus, there is a problem here with the evaluation process that has not been developed.*
- 3. I will not do any more weekly updates until the comments are removed about it.*
- 4. The comments about communication are blaming me. The mid term is under review.*
- 5. I require back pay for the EC-05 from January, 2016 to restore respect.*

I will send my weekly update when the mid-term evaluation is changed and acceptable to me; otherwise, I consider any requests for my work to be disrespect towards me.

This has gone too far.

[Sic throughout]

[162] Mr. Saint-Pierre replied, stating that the deadlines would not change and that weekly updates were required and expected.

[163] On March 17, 2017, after the meeting, Mr. Saint-Pierre emailed Mr. Thomassin about the [translation] “difficult and long” meeting with the grievor for the second evaluation of Action Plan 4. He advised the director that he had told the grievor that the meeting was about two things, “your work and your health”. In his message to Mr. Thomassin, Mr. Saint-Pierre said that the grievor provided no opportunity to discuss any aspects of her health.

[164] Toward the end of March, the grievor submitted a draft of her report on the Coherence Analysis project. Mr. Saint-Pierre provided a number of comments and observations. A version submitted on March 3, 2017, which the grievor entitled, “Outline for the Coherence Analysis of Crop Insurance Administration Data for use in the Processing of Crop Survey Data for Alberta and Saskatchewan Project” contained no data on Alberta operations. It also contained a table entitled, “Table of the Variables of the Different Data from Crop Insurance to Crop Survey”, in which 5 of the 14 crops are indicated as having been grown on a negative quantity of acreage. Mr. Saint-Pierre wrote in her draft, “Negative acreage. How is this possible? What is the conclusion with this table.”

[165] In a version of the report submitted at the end of March, the grievor deleted Mr. Saint-Pierre’s comments. However, he noted that the table showing farms with negative acreage still remained, although she appeared to offer her own critique of this data, as follows: “I have to update this table. I also have to do some research to see what happened that year ... I feel really uncomfortable with the data. I reran it and changed one thing: this should not change.” Mr. Saint-Pierre did not know what she meant by these comments.

[166] He testified to his perception of rising levels of panic on the grievor’s part in late March and early April of 2017 about not completing the project on time.

[167] On April 12, 2017, he sent her his assessment of Action Plan 4. In every one of the four areas of improvement, he indicated that she did not succeed.

[168] For the first area, “Ability to analyse [sic], draw conclusion [sic] and make recommendations”, Mr. Saint-Pierre wrote as follows:

Over the course of the project, it becomes obvious that there were major gaps in [the grievor’s] ability to analyse data, draw conclusions and make recommendations. The intermediary outputs provided over the last 3 months and the final report submitted don’t permit to conclude that [the grievor] demonstrates the required ability to analyse data, draw conclusions and provide recommendations for future usage.

The scope of the analysis performed is well below what was required for the project. Only one province has been covered instead of two and only a handful of commodities have been reviewed overall. For some of the criteria, a complete assessment has not been completed and only very general statements were provided – based on no or very limited evidence (e.g. accessibility criteria, coverage variables, coverage units). Significant amount of time not spent on the project during working hours limited the depth and analysis performed and consequently limited the conclusions and recommendations based on factual and relevant information. [The grievor] demonstrated limited knowledge of quantitative methods to perform basic data analysis.

[The grievor] demonstrated some technical skills to manipulate and merge large data files in SAS and Excel. [The grievor] has not been able to develop a concise approach and strategies to complete the work in accordance with the initial scope and objectives of the project. The methodology to determine concordances between files remained uncertain until the very end of the project. There was a lack of creativity and curiosity to come up with objective measurements and thresholds for each criteria to be measured. They were poorly defined. [The grievor] has to be reminded several times to measure the coverage in acreage and not in units. [The grievor] did not consult with methodologists, review literature or look at similar studies done in other programs or organizations to define a solid and reliable analytical strategy for this project.

Throughout the projects, in meetings and in her report, [the grievor] struggled with her interpretation of the results, even at the very first degree.

[The grievor] was reminded several times to determine the criteria and measures that will be used to determine the usability of the file, and to make sure it is based on recommendations / good practices recognized by Statistics Canada or by another international organisation. Documentation was provided to [the grievor] for the methodology used to assess those criteria.

[Sic throughout]

[169] He broke this area of improvement down into seven different performance indicators, three of which were met, and four of which were not met. The three that were met were entitled and commented on as follows:

- ...
- *Description of the project ... While details should be presented in a more organised way, the basics were covered in different portions of the documents.*
 - *Details on the external and internal data sources used ... More details should be provided in a more organised way, the basic were covered in different portions of the documents.*
- ...
- *Respect of the deadlines ... Deadlines were met consistently but there was a general lack of quality and thoroughness in the various outputs presented. A lot of proof-reading would be required for the report.*

[Sic throughout]

[170] The four unmet performance indicators were the following:

- ...
- *Description of the methodology used in the coherence analysis and the limitations in the comparison of the data sources [three comments were provided]*
 - *Assessment of the comparability of the historical trend between provincial crop, livestock and other insurance programs and STC survey's [sic] program [four comments were provided]*
 - *Summary of the results of the coherence analysis [four comments were provided]*
 - *A set of recommendations for potential usage of provincial crop, livestock and other insurance programs in the AG Stats Program ... [five comments were provided]*
- ...

[171] The second area of improvement targeted by Action Plan 4 was "Initiative". To explain how the grievor did not succeed in this area, Mr. Saint-Pierre wrote the following:

[The grievor] initially demonstrated initiative by providing an outline of the project. This was a nice surprise and it was not part of the expected deliverables. This was useful for me to help [the grievor] in the project and it gave me an opportunity to provide feedback to [her] early in the process.

[The grievor] also initiated correspondences and scheduled ad-hoc meetings with CEAG staff to get some clarification on the datasets that are part of the study. However, there should have been more of those scheduled.

Unfortunately these initiatives did not impact the direction of the project or lead to successful outcomes.

I had to remind [the grievor] to validate her preliminary results with the anticipation of the experts in CEAG. I would have expected [her] to communicate her own ideas and views and actively participate to exchange of ideas with others in regards to this project. Unfortunately, it only happened on a very limited basis, only in regards to the concordance of files.

The information, advice and guidance provided by [the grievor's] supervisor in meetings, e-mails, comments on documents and on the weekly updates were too often ignored or were considered only when it was very late in the project. Direction from her manager was not translated into concrete work activities.

She did not develop her own strategies and approach to conduct the analysis, [she] needed a lot of direction to come up with the criteria to assess the potential usage of Crop insurance data in our surveys. She did not demonstrate creativity in this project. I suggested repeatedly to precisely define, for each of the 8 criteria, measures and thresholds to guide and focus the analysis and tabulations. My suggestions have been mostly ignored.

[The grievor] could have made better use of her time to realize the activities associated with this project. Repeatedly, I had to remind [her] to focus on the activities related to the project instead of spending a lot of energy or effort dealing with topics not related to this project or not work related.

[Sic throughout]

[172] The third area was "Judgement". He wrote as follows:

...

[The grievor] provided recommendations that were based on limited information. She came to general conclusions based on measures and mostly thresholds that have not been substantiated with references. For example, based on what ground can we say that if the difference in % between two datasets is within 10%, it is good for tax replacement?

[The grievor] needed to be reminded several times to avoid invoking her intuitions and her experiences as a source of explanation. This is not presenting information based on relevant factual information. Frequently, the communications related to the project were accompanied with opinions or comments that are not relevant to the deliverables of the project itself but more related to [her] opinion related to her personal situation (perceived

unfairness of competition process, perceived unfairness of evaluations, perceived unfairness of the Action plan, perception of discrimination.) She has been reminded several times to avoid doing this.

[The grievor] did not make a good use of the time at her disposal to realize the activities associated with this project in the period of time allocated. [The grievor] did not organize her work to facilitate the success of the project. A disproportionate amount of time and energy has been spent on manipulating files and understanding concordances. A significant amount of time and energy has been devoted to complain about her evaluations, action plan, competition process, behaviour of her colleagues and perceived discrimination. Repeatedly, I had to remind [her] to focus on the activities related to the project. She ended-up lacking time to provide a thorough analysis and useful recommendations. The deadlines were met but the quality of her work was clearly not sufficient.

The documents submitted during the project were often presented as draft, general idea or presented only vaguely the ideas and approach that will be selected. Tables, graphs were not self-explanatory. There were obvious errors that should have been dealt with before presenting the results (ex. Negative acreage). [The grievor] could hardly provide basic interpretations and ideas related to these tables, graphs and results presented even with very high level results. There was a general lack of 'thinking things through.'

One of the key component of this competency is the capacity to assess potential options and to choose the best one. The weekly reports specifically ask to report on problems encountered and potential solutions should be completed more diligently. More thorough updates have been formally asked several times. The information provided did not provide a clear description of the tasks performed, problems encountered and most importantly options and recommendations. Relevant information from various sources was not considered before formulating an option to resolve the problems encountered. The solutions proposed were often personal opinions not relevant to the project itself.

Despite reviews and comments provided on existing documentation, support from colleagues and guidance / explanations from her supervisor, [the grievor] has not been able to understand and assimilate basic concepts and objectives of the project to define a suitable approach for the project. This lack of understanding combined with the lack of in-depth data analysis on relevant data set invalid most of the recommendations provided.

Ownership and Responsibility

[The grievor] attributed incomplete work to computer issues and to refusals from management to allow her doing overtime and was unwilling to acknowledge any of her performance deficiencies

[Emphasis in the original]

[Sic throughout]

[173] The fourth and final area was entitled “Working effectively with others”:

[The grievor] collaboratively worked with some colleagues from the Census of Agriculture and from the Crop Surveys. She’s been professional, respectful of their responsibilities and workloads when seeking help from them.

Interactions with [the grievor] and her managers have been very difficult. [She] cannot accept any kind of constructive feedback on her performance or her deliverables. This is really problematic. She becomes very upset and refused to consider the feedback provided.

[The grievor] has a general lack of understanding in regards to managerial roles and responsibilities and expect her managers to resolve issues related to her personal situation in ways that are not aligned with current policies, directives and practices (eg. promoting the employees, removing the Action plan, providing back pay). This led to a lot of frustration for [the grievor] vis-à-vis her managers and a general conflictual behavior with them.

In her abundant e-mail communications and meetings, [the grievor] repetitively focused on her personal situation, perceived lack of justice and repetitively questioned the management skills and fairness of AG division.

She did not respectfully accept management decisions. On a few occasions, she threatened to not submit her report and weekly updates on time unless evaluations were changed or her issues were dealt with by senior management. Invitation to her performance evaluation meetings should not have required lengthy negotiations.

Meetings were difficult with [the grievor] as she frequently took this time to discuss her personal issues instead of providing status updates on her deliverables. The cooperation was very limited and it clearly did not provide an effective working environment.

[Sic throughout]

[174] The grievor responded to this assessment via email, sent the same day (April 12, 2017):

...

I wish for my input to be considered. Again, I consider sending me to EAP to be disrespectful; I have told management what I needed and they do not cost management anything. I asked for staff to be told not to stop antics; I asked for weekend access; I asked for more time. I asked for equity.

I have offered to have other solutions. Thus, this comment about EAP is not respectful and I have asked that end. Thus, I request that management and CAPE assist me in addressing 1.01 of the collective agreement internally.

Bullies should not pick on a person who fought for their career. This is not acceptable and it is a lie that I have to respect anybody; I have to treat others with respect and I do. I don't know who is or who is not a bully but we can do better than this. I am worth more to the agency than an EC-04.

I expect CAPE, management and myself to deal with the last year evaluations outside of the chain of command. No more recourses or I put in one big one to PSLRB. This is not getting us anywhere and there are too many recourses. I expect 2017 solutions, not 1817 solutions or shall I go to the director's office for capital punishment?

Especially as the integrity and respect officer said I should leave; by not meeting me half way I cannot get a CAD to a place where I am not meet at the elevator by staff, etc.

I want something by noon tomorrow. Anything so I can have a long weekend thinking there is hope.

I think that those who have complained about me are not sincere. I do not care except it hurts my pay and my job security.

We need another solution and I expect that CAPE and management assist me.

I am being bold; the Status of Women told us to be bold.

Thank you.

...

[Sic throughout]

E. Year-end assessment for fiscal 2016-2017

[175] For every category, the grievor did not meet performance expectations. Her year-end assessment states, "Detailed comments on [the grievor's] performance for [fiscal year 2016-2017] are provided in the Action plan section. The objective to analyze data, draw conclusions and provide recommendations was not met."

[176] With respect to Section B (work objectives), the grievor's rating was "Did not meet". She responded with pages of commentary, including the following:

The irrelevant communication is insulting and abuse of power; this is the norm for e-mails today and an insult. Mgt. acts aggressively towards me to upset and pushes me, I am not being disrespectful; they are.

The irrelevant information was original and core to Canadian values, which suggests discrimination and not allowing professional opinion. The director declared he was applying stress; it is intimidation and hurts the work environment, than they ask if there is a health reason I am not doing well. It is their behaviour that affects the work environment.

...

I would change things and SAS would showed errors, indicating technology problems. I requested that staff above work things out; they punished me by devaluing my work. There is no compassion for the loss of respect this has caused as others who are less educated in the field, less technical (ex. SAS) and less experienced are promoted above me. English are not passed or if they are, they have connections or are married to somebody French. I have grave concern for Canada.

I went to an office in April 2016; [name omitted] bloated and put his tongue against his cheek; he bloated again in the fall. [name omitted] also bloated his face when he passed me in the hall. When I would leave at lunch and after work many times, he would pop out of the washroom as if he was waiting for me. I waited for the bell to ring around the corner on the elevator and he was still there one time, so I took the stairs and laughed he would be waiting a long time. I was co-chair of the employment equity women's subcommittee.

[Name omitted], a mange, also mocked me.

...

[Sic throughout]

[177] Section C of the fiscal 2016-2017 year-end evaluation deals with competencies and expected behaviours. The grievor's rating was "Did not meet". The supervisor's comments mirror those in the assessment of Action Plan 4. The grievor responded at length to her Section C rating, including the following comments:

...

The action plan is a result of staff who refused to work things out with me, who were not honest and treated me as a bad employee indicates that this process is reprisal for speaking up about data, asking for more; thus, I was denied due respect for my knowledge, personal suitability and experience.

...

I require respect to be restored in my work place. I wish for antics to be stopped but they were not, indicating a bias. They said not enough, asked for more detail and then complained. I do not feel that management is protecting my work or my physical safety.

...

Thus, the only way management can restore respect is to promote me to at least and EC-05 with back pay from January, 2016 by noon April 18, 2017.

...

[Sic throughout]

[178] For Section E of the 2016-2017 year-end assessment, the grievor's overall performance rating was "Did not meet". She responded with more very lengthy commentary, including the following:

If a person looks at what it takes to have good governance, the law that protects employees from reprisal is one of the most important laws to our jobs as public servants. This evaluation is considered as a threat for going above, asking for more work in my category and my current supervisor has read what has been said and acted in the same manner, indicating he has conferenced with them. So what else is there that I will find that we have to have this reprisal so I can not speak up? This is of concern for me as an employee and if this is not addressed in a modern fashion, in a timely manner, then I consider that the spirit of our Canadian laws are being violated knowingly and willingly.

I consider this is an illegal document.

...

[Sic throughout]

[179] Over the 2016-2017 fiscal year, the grievor was rated at "Did not succeed" with respect to the subject matters of Action Plans 3 and 4. She was absent from April to September of 2016; thus, her performance for the fiscal year was based on Action Plans 3 and 4.

[180] At the conclusion of his testimony, Mr. Saint-Pierre entered into evidence a series of 9 pages of his notes, which were single-spaced. He wrote them after meetings with the grievor in which he attempted to assist her with Action Plan 4. Approximately 20 meetings were held between January 20, 2017, and April 27, 2017, and on April 24, 2017, the grievor again wanted Mr. Saint-Pierre to change his evaluation, and he would not. He wrote the following in his notes: "[Translation] She threatened to publicly denounce me and demanded that I give her \$20 000 before noon tomorrow and that I would suffer the consequences if I did not modify her evaluation ... I left the room, telling her I would not deal with threats."

[181] On May 4, 2017, Mr. Thomassin met with the grievor in his office. He advised her that he was terminating her employment as per the provisions of s. 12(1)(d) of the *Financial Administration Act* (R.S.C., 1985, c. F-11).

[182] Both Mr. Thomassin and Mr. Saint-Pierre testified to the training available to Statistics Canada employees. The grievor completed the entry-level data analysis course, but Mr. Thomassin and Mr. Saint-Pierre were unaware of any form of training that could have helped the grievor improve her ability to analyze data. Her core issue was a lack of creativity and professional curiosity, which cannot be taught. Some of her performance issues had nothing to do with the capacity to analyze data, such as her inability to exercise good judgement, the constant confrontation with supervisors and management, and her refusal to accept responsibility for errors.

[183] Mr. Saint-Pierre, Mr. Paju, and Ms. St. Germain testified to repeatedly suggesting time-management courses to the grievor because she had difficulty with deadlines. These witnesses expressed disappointment with what they characterized as the grievor's tendency to spend valuable working hours complaining and writing about her unsatisfactory performance assessments and her failure to receive a promotion. They felt her time would have been better spent working on her projects.

IV. Summary of the grievor's evidence

[184] The grievor testified to feeling undervalued by Mr. Paju, Ms. St. Germain, and Mr. Saint-Pierre, which had not always been the case with previous supervisors.

[185] One such supervisor, called as a witness by the grievor, is Daniel Michaud, a veteran employee with Statistics Canada with considerable experience in the Agriculture Division. He characterized his working relationship with the grievor as positive and stated that he had observed her working hard to accomplish tasks. Every performance assessment has space in which to describe challenges and areas in which additional support seems to be required. In each of her assessments, the space was left blank because, according to Mr. Michaud, the grievor was performing satisfactorily.

[186] Mr. Michaud's evaluations of the grievor's performance for the years 2009 to 2013 were entered. No negative comments appear in any of them.

[187] In her testimony, the grievor frequently referred to what she termed were "antics" in the office, which she claimed amounted to harassment. She emailed

Mr. Saint-Pierre on March 14, 2017, at 2:37 p.m., insisting that he put a stop to them. He responded at 2:51 p.m. the same day, requesting more information on the incidents in question.

[188] The grievor produced an email dated March 21, 2017, describing a series of events. Although the narrative is lengthy, I have reproduced it verbatim as follows because she insisted that the “office antics”, as she called them, were an important aspect of her case:

...

1. February 10, 2017 - I went to the elevator at lunch. [name omitted] was at the elevator again- as was the secretary [name omitted];... at the noon hour, give or take ten minutes.

[Name omitted] told me of her new phone. I ignored him; a few times in this month, he had run to the elevator, like he had to catch it. This was similar to what the other staff had done, [name omitted], who appeared to pop out many times from the washroom from mid-January to just a few weeks ago.

[Name omitted] had done this a few times in the few weeks preceding this. He at one point ran over, he was chewing his lunch and kept repeating he had an urge for a burger, he had a for a burger. I had thought he was my friend until when he went down, [name omitted] moved right on him at the elevator and started talking.

I had always chatted with [name omitted]; he came in on a CAD. But after a few times, with the other things, it was clear this was not just being a friend.

I lost my walking buddy I walked with on Fridays.

I used to take my brother to lunch and treat him from the early 1990s to 2007, when he died; before 2000, we went Dutch at cheap burger places, once a week on normal weekends.

He was disabled, so he did not have a lot of friends and I still do it on Saturdays, in honour of his memory. My dad and I went after my brother passed, not as regularly, for three years.

I am not sure I told anybody; people frown upon fast food. I am not sure if he found out.

2. I removed a staff from another division who would walk very fast towards me, as I have done when I have felt treated poorly and know it has hurt my career, that those who do it will not be on an action plan and their work will not be devalued and demeaned.

3. Feb 16, 2017 - This is when I said clearly “I am late” at either 10 or 12 noon or 12 noon; a meeting was on my calendar. [Name omitted] walked in front of me when I left in the middle of the corridor, stopping to put a miniscule thing in the garbage, as I did

when he was in front of me once before as I went to a meeting, to make space, as I did not want to talk to anybody. Then when he got towards the kitchen he smiled a straight smile, moving his head sideways as [name omitted] smiled back at him. I do not know who was in the kitchen; there were a lot of staff in there.

This appointment was on my calendar.

That Friday, February 17, I went down at about 4:30, 4:40; all the floors had staff come on. It happens but the week before, it stopped at every floor and nobody got on. With the lunch time antics....

4. March 8, 2017 - before 10:54

I was chatting to a person as she waited to go to a meeting outside the A/B room. The one who gave out candies; she is very nice and seemed to want to talk to me.

I was told by this person that the staff who were working with them had indicated to the low end staff that they were all retired and coming back to work on this out of the goodness of their hearts; that the cost to come in made it not worth it.

Figuring many of us take the bus and a bus pass went down to \$100, I find it hard to believe that a retired director earning over \$100,000 a year would say an extra \$20,000 plus a year is not worth it. Sabbatical program...

I had put in my evaluation how unfair it was that Sabbaticals were coming back when we are struggling, our net pay has gone down and I am threatened with my pay, without giving the chance to work at a higher level.

I wrote this in my evaluation; I consider that it may have been leaked or shared. A person on sabbatical should not be privy to this.

Awful way to treat low paying staff. Very hard to accept no pay raise and a threat to my pay right now.

I am harassed since January, 2011.

Later I saw my old boss hanging out in the area after our conversation.

5. March 3, 2017 - when I left the week before, a young cleaner got on the elevator; there were about three cleaners, the floor moppers, all hanging around. He was away from the elevator and ran to catch it. I held the door for somebody I did not know and got on another elevator; he then did the same thing but came in behind me next time. It happened a few times, with the coincidence too much and they were not friendly to me.

About two or three times this week, [name omitted] walked in front of me, slouching. I had been sick in January and when I walked, I crouched to make sure I could stop and cough, to control it. I also had a sore leg in late February and was walking funny, a bit like [name omitted]. I note this because of when he smiled at the manager and when I had meetings, he appeared to do this.

I asked a former boss about who was the one who got rid of the ; on the Friday of this week, I heard somebody mumbled [name omitted] as they walked by. I wondered....

6. When [name omitted] the cleaner moved floors she talked to me of leaving school in a lower grade because she did not like the way they were treating a woman. She talked to a director.

7. February 22, 2017 - I went to the elevator and [name omitted] was leaning against the table. Since there appeared to be something up and I was getting tired of this, I decided to take the long way around. I went to my office and picked up something, then went the long way. This was when [name omitted] and [name omitted] rushed into the elevator in the corner by me with [name omitted] literally running in. She asked [name omitted] about the LCBO gift receipt from the Christmas party, then [name omitted] said it and then [name omitted] said something about the LCBO gift receipt. I moved away.

[Name omitted] popped out of the elevator on about February 22 - the Thursday or Friday at the end of the day. I think they heard me get my purse out of the locked cabinet; I waited and heard the ding of the elevator. He was still there. I ran down a few flights of stairs, giggling he was going to be waiting a while. Very scary.

8. Mid-January, for a few weeks, [name omitted] kept popping out of the washroom area just as I caught the elevator. I was nice to him last fall, chatting with him.

9. March 7, 2017 - The census team were noisy, making quacking sounds. It was raining outside. I heard [name omitted] on the floor; I heard a person come by outside my cubicle; they said (somebody - I did not hear who nor did I recognize who it was) is not here, quack quack.

I had walked at lunch and my injury was bad, so I was not walking normally, just a slight modification.

10. March 8 - I saw [name omitted]. I said, Oh, you are wearing purple! He said no, it is burgundy. [Name omitted] had the same colour. I did not say anything.

When I was on Fort Mac, a lady from OID told how they all came into work one day with the same colour of shirt but did not tell one lady.

11. On March 14, the elevators were all on the 12th floor; I am not sure if this is a coincidence or not; staff always appeared to be around when I left or came in, in the lobby, in [name omitted]'s office, etc.

[Name omitted] always had double edge messages up; he said if I was offended, I could. When I first moved here, he threatened me against writing on his board. I do not know the date.

At lunch time, a person walked outside my cubicle and pulled their zipper up. I had written a list one day and wrote that in a division, a guy put his hand on my knee, I said to him don't do that and he

said why. Then his supervisor and manager Would walk behind me at lunch, as my side faced the entrance to the cubicle and they Zipped up their coats, making me jump. They did this a few times. There is really no reason to zip up your jacket in this corner and it could be a coincidence, but there Are a lot of coincidences, and I just want management to know, in case there are things Going on with my work, such as changing my code. People can change the code; they can Change the date and time of files. I do not think they do this. If so, I hope they get caught and Fired.

I did this because I felt that these staff contributed to me not having career progression by Management not giving me a true and unbiased picture.

12.In the fall, [name omitted] would meet me at the elevator; I thought at first he was being nice. Then he kept showing up, so I went to the washroom. He would leave when I did but go on the outer Corridor; I think the students sitting there may have noticed, [name omitted] and [name omitted].

This happened October to mid-December. I would not have thought twice of it except he walked around the corridor and then [name omitted] and [name omitted] did it.

Thank you.

...

[Sic throughout]

[189] Mr. Saint-Pierre testified to taking no action as a result of the grievor's email and characterized it as bizarre. He forwarded it to Human Resources and to the Director with this brief note: "[translation] I am really not sure about what to do from here."

[190] In her testimony, the grievor confirmed that these were the office antics that she felt constituted harassment. She expressed anger and frustration at management's refusal to do anything about them. She wanted cameras installed in the workplace to record the antics; this suggestion was refused.

V. Summary of the arguments

A. For the employer

[191] The employer submitted that the evidence clearly demonstrates that the grievor was subject to appropriate performance standards, that it clearly demonstrated them to her, and that she received the tools, training, and mentoring required to meet them in a reasonable period. The decision to terminate her employment for poor performance was one of the possible, acceptable conclusions that it could have reached. Therefore, according to the employer, the grievance should be dismissed.

[192] The employer maintained that the grievor showed no evidence of bad faith or discrimination. These were only her perceptions, impressions, and feelings. *Tudor Price v. Deputy Head (Department of Agriculture and Agri-Food)*, 2013 PSLRB 57 holds that “[i]n order to establish bad faith, the grievor was required to offer more than his perceptions.”

[193] The employer referred to *Plamondon v. Deputy Head (Department of Foreign Affairs and International Trade)*, 2011 PSLRB 90 at paras. 46 and 47, in which the adjudicator’s jurisdiction is set out as follows:

46 For this case, which deals with the termination of an employee for unsatisfactory performance, my jurisdiction as an adjudicator is set out by the Financial Administration Act, R.S.C. 1985, c. F-11 (FAA), and by section 230 of the Act.

47 The FAA provides the employer with the authority to terminate an employee when it is of the opinion that the employee’s performance is unsatisfactory. Section 230 of the Act sets out the jurisdiction of an adjudicator hearing a grievance dealing with a termination for unsatisfactory performance. For clarity, I again reproduce section 230, 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 or demotion for unsatisfactory performance, and adjudicator must determine the termination or demotion to have been for cause if the opinion of the deputy head that the employee’s performance was unsatisfactory is determined by the adjudicator to have been reasonable.

[194] The employer submitted the following case law in support of this legal framework:

- *Gagné v. Canadian Food Inspection Agency*, 2016 PSLREB 3;
- *Lortie v. Deputy Head (Canada Border Services Agency)*, 2019 FPSLRB 10, and *Lortie v. Canada (Attorney General)*, 2019 FCA 294;
- *Forner v. Canada (Attorney General)*, 2016 FCA 136; and
- *Kalonji v. Canada (Attorney General)*, 2018 FCA 8.

[195] The employer cited *Forner*, at paras. 17 and 18. It noted that the Board should not make an independent analysis of the grievor’s performance and that it

should restrict its discussion to determining whether the deputy head's decision was reasonable.

[196] The employer submitted that the evidence clearly demonstrates a link between the performance standards and the work objectives, core competencies, and job description. All its witnesses testified that the performance standards and work objectives were consistent with what was expected of an EC-04 at Statistics Canada.

[197] These standards were clearly communicated to the grievor in the mid-term and annual assessments of her performance in fiscal years 2013-2014, 2014-2015, 2015-2016, and 2016-2017. The standards were also communicated in the action plans, which featured a mechanism for providing regular and consistent feedback, often weekly. When her performance fell short of expectations, the deficiencies were clearly explained to her, often in face-to-face meetings. The grievor had a reasonable period within which she was expected to meet the standards.

[198] The employer submitted that the grievor demonstrated her knowledge of the performance standards in her frequent commentary, especially when she responded to feedback on or appraisals of her work.

[199] The employer submitted that the grievor was supplied with the tools, training, and mentoring required to meet the performance standards expected of an EC-04, in the form of the following:

- a weekly task-summary spreadsheet to plan and monitor work projects and to provide feedback on specific issues;
- regular meetings with supervisors to discuss performance issues;
- assistance from colleagues when necessary;
- extensive on-the-job training from Mr. Saint-Pierre;
- training courses, such as on time management and work organization, project management, and data interpretation, none of which she took;
- an occupational therapist, whom she refused to consult;
- a new supervisor, when conflict was apparent with both Mr. Paju and Ms. St-Germain; and
- a reduced workload in the final two action plans.

[200] Nor did the grievor establish a *prima facie* case of discrimination, according to the employer. She never filed a Form 24 “Notice to the Canadian Human Rights Commission”, and there was no nexus between any prohibited ground of discrimination and the assessments of her performance.

[201] The employer further submitted that the grievor refused to cooperate with management. She adopted a difficult stance toward any effort to manage her performance. The employer submitted that she was unable to demonstrate sustained and significant performance improvement. To the contrary, the evidence demonstrated that she did the following:

- refused to meet to discuss her performance issues;
- interrupted performance-management meetings, became agitated, and tried to turn the meetings into negotiations;
- threatened her supervisors with harassment complaints, grievances, and abuse-of-authority complaints;
- demanded promotions or money;
- ignored her supervisors’ instructions and feedback;
- focused all her energy on her personal issues, at the expense of her performance; and
- would not take ownership of her performance issues and would instead blame technology issues.

[202] The employer submitted that it is difficult to imagine how it could have done more, especially when faced with such a confrontational attitude. For all these reasons, the employer submitted that the decision to terminate the grievor for poor performance was reasonable and that the grievance should be dismissed.

B. For the grievor

[203] The grievor submitted that as per *Plamondon*, at para. 51, “... an assessment of an employee’s performance apparently made in bad faith, arbitrarily or in a discriminatory manner, or in a manner unrelated to the position, cannot be deemed reasonable.”

[204] The employer’s reaction to perceived performance deficiencies was excessive. The grievor admitted she was not a perfect employee and that she made mistakes but

insisted that she deserved better. She likened her situation to the facts set out in *Jassar v. Canada Revenue Agency*, 2019 FPSLRB 54 at para. 635, in which the adjudicator drew the following conclusion: “At the end of the day, when everything is considered objectively, one is left with a very clear impression that the employer lost focus and went overboard.”

[205] The grievor provided an extensive list of what she termed “office antics” to Mr. Saint-Pierre and characterized them as harassment. She was dismayed and disheartened when no action was taken. She offered *Knox v. Treasury Board (Canada Food Inspection Agency)*, 2017 PSLREB 40, as a comparison because in that case, the employer used security video camera footage to prove that an employee deliberately contaminated drinking water with chlorine, an act for which he was ultimately terminated. It would have been easy for the employer to install cameras to capture the office antics that were the source of so much difficulty for her, which she submitted was an indication of the bad faith that characterized her working environment.

[206] The grievor submitted that her supervisors threatened and taunted her. She was much too closely monitored, and her performance assessments were unfair and done in bad faith because they were unbalanced, stating only the negative issues. She routinely asked for balanced input, which was never provided. There was no way of changing the errors on her performance assessments.

[207] The grievor stated that she was not given the training necessary to meet the performance standards; rather, she was told she had to work independently.

[208] She maintained that her supervisors colluded in a deliberate attempt to undermine her performance. She complained of having been “bounced around” to different sources to resolve her issues with data and that some of the individuals she went to deliberately withheld information from her, to undermine her performance.

[209] As another example of the employer’s bad faith, the grievor offered the failure to use Informal Conflict Management Services to deal with workplace issues.

[210] The action plans, according to the grievor, were designed not to enhance her performance but to provide documentary evidence of poor performance, the goal of which was ultimately to justify the employer’s decision to terminate her employment. The action plans are examples of the employer’s bad faith.

[211] She submitted that the standards expected of her were subjective and arbitrary. She was held to unreasonable deadlines while others, including Mr. Paju, were not. She stated that Mr. Paju received an extension on a project he was working on, which highlights the unfairness toward her. The deadlines in the action plans were unreasonable because they did not take into account the time it took to document the regular feedback, which was extensive.

[212] The excessive negativity of the grievor's supervisors amounted to bullying and harassment. She submitted that she simply wanted a fair evaluation, reflecting her hard work and contribution to the division.

[213] She submitted that her previous supervisor, Mr. Michaud, gave her positive evaluations, which she contended proves the inaccuracy of the evaluations she received at the hands of Mr. Paju, Ms. St-Germain, and Mr. Saint-Pierre.

[214] The grievor stated that she was called to account for errors and technical issues with the data that were simply not her fault.

[215] She submitted that she was unable to perform her job as well under Mr. Paju, Ms. St-Germain, and Mr. Saint-Pierre because her tasks had changed.

[216] In summary, the grievor submitted that her grievance should be granted because the decision to terminate her employment for poor performance was not reasonable.

VI. Decision and reasons

[217] At the outset, I wish to address the issue of witness credibility. Neither party questioned the credibility of any witness. For my part, I find that all the witnesses testified in a forthright manner. None was evasive or defensive when answering questions, and each seemed to have a very clear recollection of events. There was no conflicting testimony; the points of departure between the parties lie elsewhere. Therefore, I find that I do not have to engage in a witness credibility analysis, and I accept the testimonies of all the witnesses as truthful.

[218] Section 230 of the *FPSLRA* defines an adjudicator's or the Board's scope of intervention in such matters, 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 or demotion for unsatisfactory performance, an adjudicator or the Board, as the case may be, must determine the termination or demotion to have been for cause if the opinion of the deputy head that the employee's performance was unsatisfactory is determined by the adjudicator or the Board to have been reasonable.

[219] I agree with the employer on the legal parameters of my analysis as articulated as follows in *Plamondon*, at para. 48 :

48... [T]he adjudicator's role is to determine, based on the evidence adduced, whether it was reasonable for the employer to deem the employee's performance unsatisfactory. Should the adjudicator find that the employer was reasonable in its assessment of the employee's performance, the adjudicator must dismiss the grievance. For example, the adjudicator cannot decide that the employer's decision to terminate the employee rather than demote him was not justified or reasonable or that the employer failed in its obligation by not helping the employee find another position. Should the adjudicator decide that the employer's assessment of the employee's performance was reasonable, then the adjudicator's jurisdiction is exhausted.

[220] As articulated in *Forner*, at para. 18, I also accept that my role as an adjudicator in this matter is not to make "... an independent analysis of the applicant's performance."

A. The *Raymond* criteria

[221] The Board established the following criteria at paragraph 131 of *Raymond v. Treasury Board*, 2010 PSLRB 23 (*Raymond*) to determine whether the deputy head's assessment that a grievor's performance was unsatisfactory was reasonable:

1. Was the grievor subjected to appropriate performance standards?
2. Were those performance standards clearly communicated to the grievor?
3. Did the employer provide the grievor with the necessary tools, training, and mentoring to meet the performance standards in a reasonable time?
4. Were the deputy head or the supervisors who assessed the employee's performance involved in a bad-faith exercise?

1. Was the grievor subjected to appropriate performance standards?

[222] The job description for an EC-04 at Statistics Canada, the position occupied by the grievor throughout the relevant period, was entered into evidence and was reproduced in part earlier in this decision. I note that the grievor never filed a work-description grievance or took issue with the description's accuracy or content. I accept the testimonies of the employer's witnesses that the work she was asked to perform throughout the assessment periods covered by this grievance was consistent with the job description for her group and level. I also accept their testimonies that the work assigned to her in her action plans was consistent with the work generally expected of an EC-04 and that it was no different, in terms of complexity and deadlines, from the work being done by other employees at her group and level.

[223] In fact, Mr. Saint-Pierre testified to assigning the grievor simpler projects in Action Plans 3 and 4. I accept his testimony that he did this to help her succeed, thinking that the successful completion of a project would provide her with some much-needed positive reinforcement.

[224] The job description seems to emphasize analysis and interpretation. The testimonies of the grievor, Mr. Paju, Ms. St-Germain, Mr. Saint-Pierre, and Mr. Michaud made it clear that the nature of the grievor's duties changed when she changed from being under Mr. Michaud's supervision to that of Mr. Paju and Ms. St-Germain. Her work became more analytical. Clearly, her work changed, in that it took on a more analytical (and hence more complex) nature. I find, though, that she was being asked to do work that was still consistent with her job description. I find it was the kind of work normally expected of an EC-04 in that particular work environment.

[225] The grievor testified to a desire to increase the complexity of her work so as to enhance her profile and improve her chances of promotion. She specifically stated to both Mr. Paju and to Ms. St-Germain that she wanted to take on work requiring more analytical complexity.

[226] At several junctures in her correspondence with her supervisors, the grievor wrote about working at an EC-05 or an EC-06 level. However, she offered no testimony on this point and did not elaborate. If the grievor felt she was working at the EC-05 or EC-06 level, the job descriptions for those levels were never entered

into evidence, and this point was never argued. As I have stated, I find that she was never asked to perform work above the EC-04 level. I also accept that she was never evaluated in terms of any level other than EC-04.

[227] The Action Plans, as well as both the mid-year and year-end performance assessments, provide a clear picture of the expected performance standards. The grievor's work was assessed in terms of work objectives and the following four core competencies:

- demonstrating integrity and respect;
- thinking things through;
- working effectively with others; and
- showing initiative and being action-oriented.

[228] Concrete examples of the grievor's work product and behaviours were clearly laid out under each category in these biannual assessments. I compared the performance standards to several elements in the job description, and I found a very close correlation.

[229] The Cost of Production project was mentioned as one of the grievor's projects, so it is a useful example of how the job description was reflected in the performance assessments. The EC-04 job description contains a section entitled "Research and Analysis", which reads in part as follows:

...

Analyzes current collection, processing, editing, compilation and presentation methods and procedures to ascertain their relevancy and to determine the need for modification or replacement with alternative systems, methods and procedures.

Interprets program and user needs for statistical information, assesses the suitability of existing data products and services and translate them into a concrete, timely and affordable product.

...

[230] I compared the preceding two paragraphs to the performance indicators for the grievor's Cost of Production project, as outlined in her performance assessment for 2015-2016, which read as follows:

...

1) *Proof of concept on how to create the link file. Prepare a written detailed guideline report of how to link the files and focus on the how and avoid the what didn't work. The report should include important information examples such as a need for a common identifier to link the files. Other important information such as but not limited to information about the dataset (i.e. reference period or linking also to the FFS may provide additional useful information; limitation of the dataset). Deadline October 9th, 2015;*

2) *Create a Dataset in excel of the observation and variables Deadline October 9th, 2015;*

3) *Analysis of the data set. The analysis is to be a structure report with a logical flow. It is to be written analysis along with complementary graphs and tables to support the written component. Deadline for the final product December 11th, 2015;*

4) *This project will evaluate initiative, thoroughness, judgement and ability to analyze.*

[Sic throughout]

[231] I find the foregoing to be one of many examples of how the applicable performance standards related directly to the EC-04 job description. On the basis of the documentary evidence and the testimonies of all of the witnesses, including the grievor, I find that the grievor was subject to appropriate performance standards.

2. Were those performance standards clearly communicated to the grievor?

[232] The example just quoted, taken from the 2015-2016 performance assessment, is typical of the narrative in each and every section of each and every performance assessment. These biannual narratives communicated the different performance standards to the grievor.

[233] Every performance indicator for every project assigned to the grievor was clearly explained at the outset of each project, in the Action Plans, and was revisited frequently. A spreadsheet was created to track her progress in meeting the performance standards, and every week, Ms. St. Germain, and later, Mr. Saint-Pierre, provided feedback on different aspects of her work. Any aspect not up to an acceptable standard was discussed (more often than not, discussed to a great extent). I find that invariably, Ms. St. Germain and Mr. Saint-Pierre offered one or more suggestions as to what she would have to do to reach that standard.

[234] Almost all the testimonies of Mr. Paju, Ms. St. Germain, and Mr. Saint-Pierre were dedicated to relating how, in both oral and written communication with the grievor, the applicable performance standards were communicated and assessed. I find that there was never any question in the grievor's mind as to what was expected of her at any stage of any one of the projects to which she was assigned. The expectations were set out in great detail and were often broken down into specific categories and subcategories. They were regularly revisited and explained.

[235] The grievor's difficulty meeting those expectations is apparent from the pages upon pages of commentary, back and forth with her supervisors, every time a performance issue was identified.

[236] I find that the performance standards were clearly communicated to the grievor.

3. Did the employer provide the grievor with the necessary tools, training, and mentoring to meet the performance standards in a reasonable time?

[237] The employer referred to *Gagné*, at paras. 183 and 184, which mentions examples of tools, training, and mentoring that might be offered, as follows:

183 The evidence included numerous examples showing the employer offering the grievor tools, training, and mentoring to help her meet her objectives, such as the following:

- *training opportunities;*
- *regular meetings with the supervisors;*
- *a period in which a colleague helped her and no new files were assigned to her;*
- *periods in which she was assigned less work or in which she was assigned less-complicated tasks;*
- *a period of intense supervision developed by the employer, the bargaining agent representative, and the grievor that included work plans, regular meetings, and regular feedback; and*
- *regular reminders of tasks assigned to her that needed to be completed.*

184 The evidence also showed that at times, when the employer asked the grievor if she needed more assistance, she did not accept it. In particular, Dr. St-Hilaire asked her more than once if there were reasons that he did not know of that could explain her performance problems and if the employer could provide anything to her to help. She made no request other than to be moved to a different office, which was done immediately.

[238] The evidence clearly showed that the employer satisfactorily addressed each of the above points. The final two sentences, above, mirror the present circumstances perfectly. When Mr. Peterson perceived the grievor's conflicts with Ms. St. Germain and Mr. Paju, he transferred mentorship duties to Mr. Saint-Pierre. In his "RE: Performance Management - 3 Month Warning" letter of January 10, 2017, Mr. Peterson asked the grievor yet again to advise "... if there is anything I should be made aware of that may be affecting your performance which is beyond your control so that we may take appropriate action to accommodate you."

[239] Mr. Thomassin, Ms. St. Germain, and Mr. Saint-Pierre testified to the training the grievor received to help her accomplish her work. When she began her career at Statistics Canada, she underwent what was termed a "boot camp", which is a survey-skills development course of six weeks' duration. She was taught how to conduct surveys (and she did in fact conduct them) as well as how to gather, store, retrieve, and analyze data.

[240] At the outset of her career, the grievor also took the Business and Economic Statistics Training course, of six to eight weeks' duration. She learned in greater detail how data is collected and integrated. She also took a six-week data-interpretation workshop. According to Mr. Thomassin, this session is split into several integration and analysis sections, the goal being to bring together several data sources to "tell a story".

[241] This is exactly the kind of work the grievor was asked to do in Action Plans 1, 3, and 4 (Action Plan 2 was never implemented due to her absence from the workplace). Ms. St. Germain and Mr. Saint-Pierre testified that there was no additional course they could have sent her on to help with her difficulties.

[242] The possibility of sending the grievor to take the same introductory courses again was never explored at the hearing, and indeed, she never requested it. She did not complain about not having the necessary skills and needing additional training to acquire them. Quite the contrary is true — she insisted her work was satisfactory and that she was simply being evaluated too harshly.

[243] It is apparent from the written correspondence between the grievor and her supervisors that she had difficulty meeting deadlines. Both Ms. St. Germain and

Mr. Saint-Pierre suggested time-management courses, but the grievor never requested them. She did not testify to this but indicated in correspondence that she did not feel that she needed a time-management course because she had already taken one.

[244] Part of the difficulty with her time management, testified her supervisors, was that the grievor seemed to spend an inordinate amount of time writing complaints about the assessment process itself, about specific points in her different assessments, about not having been considered for a promotion, and about other personal issues that had nothing to do with the projects she was supposed to be working on. They testified to what they perceived was increasing panic on her part when a deadline approached and a concurrent tendency, which was highly counterproductive, to focus more on issues not related to work as deadlines loomed.

[245] Many times in her correspondence with her supervisors, the grievor stated that not only did she not require or want additional training in analytical skill development, but also, she felt that she was already performing above the EC-04 level. She insisted on receiving back pay at the EC-05 level.

[246] Mr. Saint-Pierre testified to a meeting on April 24, 2017, at which the grievor again demanded of him that he change her performance evaluation. He noted that she threatened to publicly denounce him, that she demanded that he give her \$20 000 before noon the next day, and that she stated that he would "... suffer the consequences if [he] did not modify her evaluation ...".

[247] In an email to Mr. Saint-Pierre dated January 13, 2017, the grievor stated the following:

...

I have revised the Action Plan to address the issues that I have raised so we have a position of both sides before we move forward. It was said I agreed to the Action Plans but I have not; it was imposed on me despite the comments I made.

As a Canadian, you cannot expect me to just sit and not say anything while this is being done; this would go against our culture. This was supposed to be a fresh start; using the comments of others that are subjective is not acceptable.

This is what I expect to be discussed as an EC-04 who has been passed in ways not clear that follow TB guidelines due to comments from management, who may have been an EC-05 or EC-06 or even above if management in the past had not influenced

managers to be more negative than they ought to be. This needs to be addressed.

As far as I am concerned, I am one of the best employees here.

...

[Sic throughout]

[248] When questioned about the training issue, both Ms. St. Germain and Mr. Saint-Pierre testified that many of the grievor's performance problems were rooted in issues that went beyond anything that technical skill development could address because they had more to do with her inability to accept any form of criticism whatsoever. On-the-job training cannot address this.

[249] Mr. Thomassin testified to two reasons for assigning Mr. Saint-Pierre to the role of supervising the grievor. First, he noted her conflicts with Mr. Paju and Ms. St. Germain, and he felt that a fresh start with someone she had never worked with would help her. To ensure that she received the best possible mentoring and on-the-job training, Mr. Thomassin said that he chose Mr. Saint-Pierre because he was one of Mr. Thomassin's most knowledgeable and empathetic employees, and Mr. Thomassin felt that if anyone could help the grievor attain a satisfactory level of performance, it was Mr. Saint-Pierre.

[250] I find that Mr. Thomassin's assignment of Mr. Saint-Pierre to the grievor's case was a genuine attempt to help her. Similarly, I find the grievor's reassignment, at her request, to a new supervisor another indication of the employer's good faith and another genuine attempt to help her improve.

[251] I mentioned earlier Mr. Saint-Pierre's testimony to the effect that the analytical work associated with Action Plan 4 was deliberately kept simpler, in an effort to provide a platform for success. He testified to the grievor being in desperate need, by then, of a success story. She needed positive reinforcement. Similarly, I find his approach indicative of the employer's good faith in performance-managing the grievor.

[252] When problems with the grievor's analyses surfaced, as they did frequently, Ms. St. Germain and Mr. Saint-Pierre testified to breaking things down into smaller steps and to helping her refine and focus her analysis. To choose one example of this type of assistance from literally hundreds, as part of Action Plan 4, she worked on a

project she entitled, “Coherence Analysis of Crop Insurance Administration Data for use in the Processing of Crop Survey Data for Alberta and Saskatchewan Project”.

[253] One of the grievor’s draft versions of this project contained a paragraph that stated, “A graph will show trends and a linear regression will give a flavour of the process.” Mr. Saint-Pierre highlighted her text, and noted, “How will a linear regression be used here? What will be the dependent variable and the independent variables? It should not be mentioned if this is not part of your approach.” In the draft, the accompanying table of data she chose featured the measurement of crops apparently grown on a negative quantity of acreage. Mr. Saint-Pierre added the note, “Negative acreage. How is this possible? What is the conclusion with this table.”

[254] Mr. Saint-Pierre testified that he noted in the margins of her draft report and told her in meetings that the project was designed to use data from both Alberta and Saskatchewan, but as of that point, she had used data pertaining only to farms in Saskatchewan.

[255] In the grievor’s final version of this project, she left the linear regression statement in and included, unchanged, the table showing negative acreage. The project was limited to the analysis of Saskatchewan farms.

[256] Mr. Saint-Pierre testified to these points as examples of how performance standards were routinely communicated to the grievor, of how feedback and suggestions were provided to her in an effort to raise her performance to the level required, and of how she would completely ignore them.

[257] It is significant that the grievor failed to address such glaring deficiencies when they were brought to her attention in sufficient time to correct them. Of greater significance is that this all occurred in the course of an action plan that had clearly been described to her as a “last chance” opportunity to avoid dismissal for poor performance.

[258] The grievor’s performance issues were noted and well documented from 2013 to her termination in 2017. Approximately three and one-half years, allowing for time absent from the workplace in 2016, were dedicated to bringing her performance up to a satisfactory level. This was ample time for improvement. Four action plans were prepared for her, and she was actively engaged in three of them. All three were

designed with her improvement in mind. All three were well thought out and well monitored. None of them worked. The employer dedicated a great deal of time and considerable resources to what ultimately was a failed attempt to bring her performance up to a satisfactory standard.

[259] I find that the grievor was provided with the necessary tools, training, and mentoring required to meet the performance standards in a reasonable period.

4. Were the deputy head or the supervisors who assessed the employee's performance involved in a bad faith exercise?

[260] This is the crux of the grievor's argument. Throughout the hearing and in her submissions, she insisted that the supervision she received from Mr. Paju, Ms. St. Germain, and Mr. Saint-Pierre was excessively and unfailingly negative and that therefore, it amounted to harassment. She blamed the failure of her projects on technology issues and exigencies relating to the SAS database. She maintained that she received conflicting messages from her supervisors: at one point, she was told to seek the assistance of others, only to be told later of the importance of working independently. She claimed that people deliberately withheld information and assistance from her. She claimed that they tampered with her computer, which compromised her work product. She frequently complained about discrimination in the workplace against women and economists. She insisted that not installing hidden cameras in the office, to capture the "antics" of her fellow employees, was a display of bad faith on management's part.

[261] No evidence of any kind was produced in support of the grievor's contention that her computer had been tampered with. No evidence was produced to support her belief that others in the workplace deliberately withheld information from her.

[262] Mr. Paju, Mr. Thomassin, Ms. St. Germain, and Mr. Saint-Pierre all testified to the occasional SAS issue in the workplace. They also testified that such problems are normal and that data anomalies occurred from time to time and affected all users, including the grievor. There seems to be a recurring difficulty, in particular, with exporting SAS data to an Excel spreadsheet. "This is the nature of the beast," testified Mr. Thomassin; "It happens to everyone."

[263] Every researcher must make his or her peace with the realities of data collection and management. I find no evidence of a disproportionate amount of technical

difficulty falling the grievor's way. Rather, I find a disproportionate tendency on her part to blame some of the issues that the supervisors raised (mostly about the accuracy of her work and missed deadlines) on technical or technological issues.

[264] I find that Mr. Paju, Ms. St. Germain, and Mr. Saint-Pierre did an excellent job, in the written feedback provided regularly to the grievor, of distinguishing the points at which she would be encouraged to work independently from the situations in which she was encouraged to seek the assistance of peers and subject-matter experts. Ms. St. Germain, at the outset of the Cost of Production project in Action Plan 1, and Mr. Saint-Pierre, at the outset of Action Plans 3 and 4, consistently wanted the grievor to come up with her own ideas in the outline and at key points in her analysis. Mr. Saint-Pierre went so far as to say that he was "pleasantly surprised" at her presentation of a preliminary project outline for Action Plan 4.

[265] Once the projects were up and running, both supervisors suggested that from time to time, with respect to very specific issues about data and analysis, she seek the assistance of colleagues more familiar with the particular problem she happened to be facing. I did not find the direction that the supervisors provided with respect to independent work at all contradictory or confusing.

[266] The grievor's correspondence is peppered with oblique references to discrimination.

[267] Even though the grievor raised a human rights issue, she did not provide the appropriate notice to the Canadian Human Rights Commission as indicated in the legislation. Therefore, I cannot decide this issue. However, if I were to decide it, I would find that she has not established a *prima facie* case of discrimination.

[268] The Supreme Court of Canada ("the Supreme Court") set out the definition of a *prima facie* case as follows in *Ont. Human Rights Comm. v. Simpsons Sears Ltd.*, [1985] 2 S.C.R. 536 at para. 28:

28. ... The complainant in proceedings before human rights tribunals must show a prima facie case of discrimination. A prima facie case in this context is one which covers the allegations made and which, if they are believed, is complete and sufficient to justify a verdict in the complainant's favour in the absence of an answer from the respondent-employer....

[269] The criteria that a grievor or a complainant is required to show in order to establish a *prima facie* case of discrimination are set out in *Stewart v. Elk Valley Coal Corp.*, 2017 SCC 30, [2017] 1 S.C.R. 591, at paragraph 24 :

24. To make a case of prima facie discrimination, “complainants are required to show that they have a characteristic protected from discrimination under the [Human Rights Code, R.S.B.C. 1996, c. 210]; that they experienced an adverse impact with respect to the service; and that the protected characteristic was a factor in the adverse impact”: Moore, at para. 33. *Discrimination can take many forms, including “indirect’ discrimination”, where otherwise neutral policies may have an adverse effect on certain groups:* Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center), 2015 SCC 39, [2015] 2 S.C.R. 789, at para. 32. *Discriminatory intent on behalf of an employer is not required to demonstrate prima facie discrimination:* Bombardier, at para. 40.

[270] If the grievor establishes a *prima facie* case, then the employer must explain its actions.

[271] The grievor did not produce any evidence to indicate that she was ever discriminated against on the basis of being a woman. The mere fact that she is a woman is not sufficient to establish a *prima facie* case of discrimination.

[272] While the Board can give weight to the complainant’s belief, as the Canadian Human Rights Tribunal has stated, “... an abstract belief that a person is discriminated against, without some fact to confirm that belief, is not enough.” (See *Filgueira v. Garfield Container Transport Inc.*, 2005 CHRT 32 at para. 41; application for judicial review dismissed in 2006 FC 785). I find that the grievor failed to supply evidence of even a single incident in which she received differential treatment for which discrimination on the basis of gender could arguably be considered to have been a factor. As such, she has not established a *prima facie* case of discrimination. Therefore, there is no need for me to proceed with the rest of the analysis on this allegation.

[273] I deliberately reproduced, earlier in this decision, the list of “antics” that the grievor argued amounted to workplace harassment. She believed that the employer’s failure to install cameras to capture those office antics was an indication of the bad faith that characterized her work environment.

[274] The grievor was aware of how to file a complaint of harassment. It had to be sent to the Harassment Prevention Officer, as indicated by Mr. Peterson in his letter of expectations to her, dated March 8, 2016. No evidence was led as to what happened with this list of “antics” other than Mr. Saint-Pierre’s having forwarded it to the Director and to Human Resources.

[275] Whether or not the employer installed cameras was not explored in this hearing. The grievor feels quite strongly that cameras were not installed. I do not see how this could amount to bad faith, or how it could have affected the employer’s assessment of the grievor’s workplace performance.

[276] The grievor is not the first employee to have alleged harassment when placed under close supervision. The employer correctly identified a line of cases that stands for the proposition that action plans and other performance-management tools do not constitute harassment. *Lortie v. Deputy Head (Canada Border Services Agency)*, 2019 FPSLRB 10 (judicial review dismissed in 2019 FCA 294), states as follows at paragraph 362:

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

[277] I make the same finding in this case. It is not harassment just because a grievor says it is. I cannot even see a hint of it. No item of evidence indicates an act of aggression on management’s part. The grievor said she felt intimidated, offended, degraded, and humiliated several times from 2013 to her termination in 2017, and I do not disbelieve her. Her work, however, was subject to legitimate criticism, which at times was harsh and extensive because it was warranted. I do not doubt that this was an unpleasant experience, but it was not harassment.

[278] The grievor was clearly not happy at having been obliged to participate in any of her action plans, but the intent of those performance-management tools was never to intimidate, offend, degrade, or humiliate her. Nothing suggests that these tools were anything other than legitimate methods of managing unsatisfactory performance. No

language anywhere in them can be characterized as intimidating, offensive, degrading, or humiliating.

[279] The *Jassar* matter, submitted by the grievor in support of her argument that the supervisors “went overboard” in their management of her performance, is easily distinguished from the present circumstances. The Board found that the employer in that case imposed discipline for a variety of incidents, none of which was warranted. It was found to have committed a series of very serious errors of judgement, which was ultimately why the Board found that its actions had been excessive. Precisely the opposite is true in this case. The grievor’s supervisors did not go “overboard” in managing her performance. They acted reasonably and did what was necessary in a series of efforts to correct her performance deficiencies.

[280] Dozens of times, the grievor used words to the following effect: “I wanted balanced input.” Ms. St. Germain put it quite bluntly when she said something like, “If there were any positive elements, I would have pointed them out.” She might not have been particularly tactful when she said that, but nor was she overly harsh or unprofessional. It is not as though her supervisors never pointed out the positive aspects of the grievor’s work. They routinely acknowledged the positive aspects of her analyses. They recognized her contribution to workplace wellness through such initiatives as the Employee Equity Women’s Subgroup. When she demonstrated a willingness to work with others, they said as much. When she improved, albeit briefly, in her ability to withstand constructive criticism, they said as much.

[281] I already mentioned Mr. Saint-Pierre’s delight at the preliminary project outline that the grievor provided. When positive aspects of her work were displayed, they were acknowledged. However, if the inescapable truth of the matter happens to be that the negative factors far outweigh the positive, it does not automatically mean a failure to provide what the grievor characterized as “balanced input”.

[282] The language of the assessments is respectful, but it is often blunt and leaves no doubt that improvement is required. The grievor was under no misapprehension about the consequences of a failure to improve; she knew for quite some time that her job was on the line. She knew what she had to do to avoid losing it. She was given over three years to turn her career around. The employer showed a good deal of patience.

[283] I find particularly unconvincing the grievor's suggestion in her pleadings that the employer could have considered demoting her rather than terminating her employment outright. She certainly did not raise the possibility of demotion with her supervisors. To the contrary, she insisted to Mr. Saint-Pierre that she was one of the best employees, deserving not only of a promotion (or two) and a pay raise but also retroactive pay. By far, the weightiest component of her poor performance was her inability to receive constructive criticism and her tendency to gainsay every negative comment that came her way.

[284] In her pleadings, the grievor offered as an indication of her employer's bad faith her placement on a performance-management program when one of her supervisors, Mr. Paju, was given additional time to complete a project he was working on. I must point out that this was never explored in cross-examination. In any case, Mr. Paju's performance was not at issue, the grievor's was. Mr. Paju may well have been granted some kind of an extension on a project. This would not be unusual and would therefore not be differential treatment. The grievor's deadlines were also extended from time to time, even in the latter stages of the performance-management process.

[285] The grievor tendered performance appraisals from her previous supervisor, Mr. Michaud, characterizing them as positive. They are not. They say nothing positive; they describe only her objectives and tasks in any given year. The best that can be said is that they lack any negative commentary. The grievor pointed out the section of each year's evaluation entitled, "Considerations, challenges, and additional support required". This field was left blank, year after year, under Mr. Michaud.

[286] I note that the field entitled, "Employee Comments" was also left blank, year after year, under Mr. Michaud. This stands in stark contrast to the pages upon pages of commentary the grievor wrote in response to each and every performance issue raised by her subsequent supervisors. By avoiding the use of either positive or negative commentary, it would seem as though Mr. Michaud found a simple way of avoiding workplace conflict.

[287] I am not a statistician or an economist, and my role is not to evaluate the grievor's performance in this respect. The employer is best suited to do that. My task is to determine whether the employer's evaluation was reasonable. Since every evaluation was tied directly to a performance indicator clearly within the realm of the grievor's

job description, and since each performance indicator was based on clear examples from the grievor's work product, I find that the employer fairly and reasonably evaluated her work over the relevant period.

[288] Based on the issues raised by all the grievor's supervisors several times between 2013 and 2017, I find it reasonable that the employer placed her under close supervision in 2013 to improve the quality of her work.

[289] I also find it reasonable that the employer took issue with the grievor's tendency to include, in reports ultimately destined for external or internal publication, opinions and commentary about personal issues, complaints, and observations, none of which had anything to do with the project at hand.

[290] I find that it was reasonable for the employer to characterize as performance issues the grievor's inability to receive constructive criticism and her refusal to meet and discuss performance issues.

[291] I also find it reasonable that the employer characterized as a performance issue the grievor's tendency to use valuable work time to compile pages upon pages of workplace-related complaints as well as personal observations on her perceptions of the plight of female economists at Statistics Canada instead of doing her job.

[292] On the issue of on-the-job training, I find that the mentorship provided by Mr. Paju, Ms. St. Germain, and especially Mr. Saint-Pierre was thorough, well documented, and sufficient to help the grievor meet her objectives. That it did not succeed has everything to do with the grievor and nothing to do with her supervisors.

[293] As to whether the grievor could possibly have taken specific training courses to help overcome certain performance deficiencies (such as working with the complex and sometimes intransigent SAS database or basic data analysis techniques), I note that she had already taken them. More to the point, she did not request such training because she did not feel that she needed it. She was under the seriously misguided impression that she was already performing at a level above EC-04.

[294] I must also agree with Mr. Saint-Pierre, Mr. Thomassin, and Ms. St. Germain, who stated that there are some types of performance issues that no amount of training can correct. This is especially so with respect to the grievor's adversarial and often combative stance on constructive criticism.

[295] Nothing in the evidence before me indicated that the employer's assessment of the grievor was characterized or motivated by bad faith.

[296] I note that the criteria established in *Raymond* were applicable when this matter was argued before me. Since then, the Board has restated those criteria in *Dussah v. Deputy Head (Office of the Chief Human Resources Officer)*, 2020 FPSLRB 18, which provides added clarification. However, the criteria are not determinative in the matter before me, as bad faith has not been proven.

[297] The evidence before me indicated that it was reasonable for the employer to find that the grievor's performance was unsatisfactory, which led to her termination.

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

(The Order appears on the next page)

VII. Order

[299] The grievance is dismissed.

May 26, 2020.

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