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



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

BETWEEN

DARSHAN SINGH

Grievor

and

SENATE OF CANADA

Respondent

Indexed as

Singh v. Senate of Canada

In the matter of a grievance referred to adjudication under section 63 of the
Parliamentary Employment and Staff Relations Act

Before: Linda Gobeil, a panel of the Federal Public Sector Labour Relations and
Employment Board

For the Grievor: Paul Champ and Bijon Roy, counsel

For the Respondent: George G. Vuicic and Jason Mercier, counsel

Heard at Ottawa, Ontario,
February 3 to 7, 10 to 12, and 14 and March 2, 4, and 5, 2020.

REASONS FOR DECISION

I. Individual grievance referred to adjudication

[1] Darshan Singh is a member of a visible minority group. In 2015, he was an executive in his position as the director of the Senate of Canada's ("the Senate") Human Resources Directorate. On December 3, 2015, the Senate informed him that his employment had been terminated. He alleged that the Senate acted unfairly and that it discriminated against him on the basis of his race. The letter of termination reads as follows:

December 2, 2015

Mr. Darshan Singh

Edifice Chambers, 13th floor

BY HAND

Darshan,

I regret to inform you that the Senate of Canada has decided to terminate your employment, effective today.

The reason for this decision is the breakdown in the confidence and trust which are essential to the viability of your employment relationship. The Senate's loss of your confidence and trust in you are primarily the result of your attitude and behavior towards the Chief Corporate Services Officer, to whom you have reported since January 2015.

Among other actions, you have made serious allegations of misconduct by your superior, including that she mislead Senators. You have accused the CCSO of acting towards you based on improper motives, and of "micro-managing" your performance. You have even gone as far as to attack the CCSO's competence in matters under her authority, in the presence of the CCSO and other members of the Executive Committee.

The Senate considers that your attitude and behavior reflect an inability or unwillingness to accept the supervisory authority of the CCSO. Although the problem has been highlighted recently by your initiative in seeking to have the HR Directorate removed from the CCSO's authority, the Senate's review has revealed that the issues relating to your attitude and behavior have been long-standing. Indeed, it appears that the problems began around the time the CCSO's investigation into the establishment of your terms and conditions of employment with the Senate, which ultimately led to discipline being imposed upon you.

In the face of your attitude and behavior towards your superior, the Senate simply cannot maintain trust and confidence in you, and can no longer continue your employment.

In anticipation of the possibility that you may believe or claim that the termination of your employment was in response to concerns of discrimination that you recently expressed regarding the CCSO, I assure you that it is not the case. The Senate's decision is the result of an assessment of the entire history of your behavior and attitude since the spring of 2015, and of the cumulative effect of your actions.

While the Senate's decision is based on the above reasons, the Senate has decided not to rely on these reasons as cause for the termination of your employment. Consequently, in consideration of the termination of your employment without cause, the Senate is prepared to provide you with the following termination benefits, subject to signature of mutually agreeable minutes of settlement and release:

- . pay in lieu of notice of termination, equivalent to 3 months' salary, less deduction required by law;*
- . Outplacement counselling services, for a period of 3 months; and*
- . a letter of reference, to assist you in finding alternate employment.*

Please obtain whatever professional advice you believe necessary, and advise me by December 16, 2015 whether you accept the Senate's offer, by returning to my attention a copy of this letter duly signed below. I regret that this decision has become necessary, and wish you the best in your future endeavours.

Charles Robert

Clerk of the Senate and the Parliaments.

...

[Sic throughout]

[2] On December 17, 2015, pursuant to s. 62 of the *Parliamentary Employment and Staff Relations Act* (R.S.C., 1985, c. 33 (2nd Supp.); PESRA) Mr. Singh filed a grievance with the Public Service Labour Relations and Employment Board (as it was then known) against the Senate's decision to terminate his employment. The grievance reads as follows (Exhibit G-1, tab 5):

I grieve the without-cause termination of my employment on December 2, 2015 as well as other actions leading to my dismissal, as being unlawful as well as discriminatory, contrary to sections 7, 10 and 14 of the Canadian Human Rights Act. Specifically I raised my exclusion of meetings, certain staffing actions, and being subjected to heightened or additional scrutiny as adverse differential treatment on the grounds of race, colour, national or ethnic origin, as I was the only director to be treated in this manner and the first visible minority senior executive in the Senate. The employer failed to investigate my allegations of

discrimination, and instead terminated my employment shortly thereafter.

[3] In his grievance, Mr. Singh asked for the following as the remedy:

- 1) that he be reinstated in his position, retroactive to the termination date;
- 2) that he be made whole;
- 3) that he receive compensation of \$40 000 under s. 53 of the *Canadian Human Rights Act* (R.S.C., 1985, c. H-6; *CHRA*); and
- 4) that he receive interest on being made whole and on the compensation under the *CHRA*.

[4] Later, Mr. Singh also argued that after the termination of his employment, the Senate disclosed information or did not take the necessary steps to correct false information and rumours about him. Therefore, he seeks additional damages for loss of reputation, mental distress, and harm to his dignity, which will be detailed later in this decision.

[5] On June 19, 2017, *An Act to amend the Public Service Labour Relations Act, the Public Service Labour Relations and Employment Board Act and other Acts and to provide for certain other measures* (S.C. 2017, c. 9), received Royal Assent, changing the name of the Public Service Labour Relations and Employment Board and the title of the *Public Service Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365) to, respectively, the Federal Public Sector Labour Relations and Employment Board (“the Board”) and the *Federal Public Sector Labour Relations and Employment Board Act*.

[6] Originally, this matter was scheduled for a hearing in 2017 before the Federal Public Sector Labour Relations and Employment Board (“the Board”). The original hearing ended in December 2017. Sadly, the Board member assigned to the case passed away in May 2019, before a decision was issued. In July 2019, with the parties’ agreement, a *de novo* hearing was scheduled for the two first weeks of February and the first week of March 2020.

[7] The hearing took 12 days. The parties agreed that Mr. Singh would give evidence first. Witnesses were excluded.

[8] Mr. Singh testified at length. So did the Senate’s first witness, Nicole Proulx, who as of the termination of Mr. Singh’s employment was the Senate’s chief corporate services officer and Mr. Singh’s immediate supervisor. Jules Pleau; Michel Patrice,

Law Clerk and Parliamentary Counsel; and Senator Leo Housakos also testified for the Senate. All witnesses were rigorously cross-examined.

[9] Since the alleged unfair treatment and discrimination of Mr. Singh took place in different situations, I tried to cover all of them extensively, as reported by the witnesses, keeping in mind that while each situation might not prove discrimination on its own, the accumulation of questionable behaviours certainly could demonstrate a pattern of discriminatory practices. I also reported the facts in the order in which the witnesses presented them, which is not necessarily the chronological order.

II. Opening statements

A. For Mr. Singh

[10] Mr. Singh is a member of a visible minority group. As of the termination of his employment, he occupied a position classified SEG-02 under the Senate's classification system, which is equivalent to the EX-02 classification in the public service.

[11] In December 2015, the Senate decided to terminate Mr. Singh's employment only one week after he raised concerns to Ms. Proulx about her actions. Mr. Singh maintained that in that decision, the Senate acted in bad faith and discriminated against him, contrary to ss. 7, 10, and 14 of the *CHRA*. Sections 7, 10, and 14.1 of the *CHRA* read as follows:

7 It is a discriminatory practice, directly or indirectly,
(a) to refuse to employ or continue to employ any individual, or
(b) in the course of employment, to differentiate adversely in
relation to an employee,
on a prohibited ground of discrimination.

...

10 It is a discriminatory practice for an employer, employee
organization or employer organization
(a) to establish or pursue a policy or practice, or
(b) to enter into an agreement affecting recruitment, referral,
hiring, promotion, training, apprenticeship, transfer or any
other matter relating to employment or prospective
employment,
that deprives or tends to deprive an individual or class of
individuals of any employment opportunities on a prohibited
ground of discrimination.

...

14.1 It is a discriminatory practice for a person against whom a complaint has been filed under Part III, or any person acting on their behalf, to retaliate or threaten retaliation against the individual who filed the complaint or the alleged victim.

[12] Mr. Singh also pointed out that after the termination of his employment, by its behaviour, the Senate contributed to many unfounded rumours and speculation being raised in the media about him, which seriously harmed his personal and professional reputations.

[13] Mr. Singh insisted that he was the Senate's first hire of a member of a visible minority group at the executive level and that as of the hearing, he remained the only one.

[14] Mr. Singh stated that the evidence would show that he was a rising star who reached the executive cadre before age 40. Unfortunately, the unfair and discriminatory actions of the Senate's representatives put an end to his aspirations after he complained about his supervisor's discriminatory behaviour and was told that the matter would be investigated. He indicated that no real investigation took place and that instead, the Senate arbitrarily decided to terminate his employment.

[15] Mr. Singh also stated that he was no longer disputing the employer's right to terminate employment without cause but nevertheless maintained that its decision was plainly wrong and discriminatory and that it infringed ss. 7, 10, and 14 of the *CHRA*.

B. For the Senate

[16] The Senate alleged that basically, this case is about an employee who did not accept his supervisor's authority. It stated that employees must respect their supervisors. Mr. Singh had to accept Ms. Proulx's authority and could not accuse her of wrongdoing when she had not committed any. The Senate indicated that Mr. Singh's employment was terminated because he refused to recognize Ms. Proulx's authority and because he made unfounded accusations against her.

[17] The Senate stated that Mr. Singh joined the Senate at the end of October 2013 as part of an Interchange Canada assignment. He reported to the Senate clerk, Gary O'Brien. At that time, Mr. O'Brien's organization was very flat. He had 12 direct reports, including Charles Robert, Mr. Patrice, and Ms. Proulx, Chief Financial Officer

and Director of Finance and Procurement at that time, as well as Mr. Singh, Director of Human Resources (Exhibit E-1, tab1).

[18] At the end of 2014, the situation changed with the announcement of Mr. O'Brien's retirement. In 2015, the clerk's role was assumed by an Executive Committee comprising the chiefs of each of three sectors. Mr. Robert became Clerk of the Senate and Clerk of the Parliaments (Chief Legislative Services Officer), Mr. Patrice became Law Clerk and Parliamentary Counsel, and Ms. Proulx became Chief Corporate Services Officer. Those three formed the Executive Committee. As a result, as of February 2015, the Human Resources Directorate, with Mr. Singh as its director, reported to Ms. Proulx (Exhibit E-1, tabs 1 and 2).

[19] The Senate suggested that initially, Mr. Singh and Ms. Proulx had a fine relationship. But it started to deteriorate after he was appointed Director of Human Resources for the Senate at the end of his Interchange Canada assignment.

[20] The Senate indicated that an employee filed a grievance after a notice of intent to appoint Mr. Singh as the director of human resources was filed and that Ms. Proulx had to investigate the matter. While gathering the facts with respect to that grievance, she found out that Mr. Singh had prepared his letter of offer as the director of human resources and as such had breached the Senate's rules and standards of conduct. He was then disciplined for it via a letter of reprimand.

[21] According to the Senate, while Ms. Proulx was prepared to give Mr. Singh another chance, their relationship became more difficult. It maintained that Mr. Singh started to undermine her. He disputed her authority on human-resources matters and accused her of micromanaging him, even though she was simply exercising her authority as the chief corporate services officer.

[22] The Senate indicated that the evidence would show that Mr. O'Brien and Ms. Proulx had different management styles in that Mr. O'Brien's was more hands-off.

[23] According to the Senate, Ms. Proulx wanted to be more involved than her predecessor, which Mr. Singh simply did not accept. Ultimately, he emailed her on November 24, 2015 ("the November 24 email"). In it, he claimed that he had suffered racial discrimination because he was no longer invited to meetings of the Standing Committee on Internal Economy, Budgets and Administration ("the Standing

Committee”) and to those of its Steering Committee (“the Steering Committee”). Among other things, he also claimed that Ms. Proulx had withheld information from senators. The Senate insisted that those allegations were simply baseless, and that Ms. Proulx had not even made some of the decisions at issue in the email.

[24] The Senate stated that following the November 24 email, Mr. Robert and Mr. Patrice met with Mr. Singh. The decision to terminate his employment was made shortly after that by the three senators who formed the Steering Committee. Ms. Proulx was not involved in that decision.

[25] The Senate denied any discrimination and maintained that claims of it are not enough. It also stated that this case is about not statistics but the Senate’s authority to terminate Mr. Singh’s employment for his actions.

III. Summary of the evidence

A. For Mr. Singh

[26] In his testimony, Mr. Singh referred to specific occasions on which he alleged that Ms. Proulx acted unfairly and in a discriminatory manner toward him because of his ethnic background. It is important to note from the outset that in the November 24 email, he singled her out for the alleged discriminatory acts and stated that he did not feel that the other two Executive Committee members had treated him differently (Exhibit G-1, tab 1, page 2).

1. Mr. Singh’s employment background and arrival at the Senate

[27] Mr. Singh started his testimony by reviewing his professional accomplishments before joining the Senate (Exhibit G-2, tab 1).

[28] He explained that he fell in love with human resources after first being a human-resources advisor with the Canada Revenue Agency and later as a staffing advisor classified PE-05 with the Public Service Commission. Mr. Singh pointed out that he had been involved in probably 300 staffing processes for executives. Later on, while classified PE-06 with the former Canada Public Service Agency, he advised on the staffing of assistant-deputy-minister positions classified EX-04 and EX-05. The client was the deputy minister of a department, with whom he worked closely.

[29] In October 2009, the Department of Public Safety and Emergency Preparedness approached him to become Manager of Resourcing Operations, still at the PE-06 group and level. Mr. Singh pointed out that he was very pleased with that assignment since it gave him more responsibilities, like in compensation and classification. He explained that he was ambitious and that he “wanted to build on [his] CV”.

[30] In 2011, Mr. Singh joined the Canada School of Public Service (“the School”), where he became Director of Human Resources Strategies and Corporate Resourcing, classified at the EX-01 group and level. He testified that he left the School after it went through a major workforce adjustment exercise. He indicated that he then had to let 250 employees go and dealt directly with the School’s president. Mr. Singh testified that at that point, he decided that it was time to leave.

[31] In July 2013, he applied for an assignment at the Senate (Exhibit G-2, tab 1). He pointed out that at that time, he thought that working for an employer outside the public service’s core public administration, like the Senate, would be a good addition to his CV. He added that when he joined the Senate, he held two degrees from the University of Ottawa and had extensive human-resources experience.

[32] Mr. Singh testified that he interviewed for the position of Director of Human Resources at the Senate. The selection board comprised Marc Audcent, Law Clerk and Parliamentary Counsel at that time; Ms. Proulx, Director of Finance for the Senate at that time; and Jane Hardy, a consultant. Mr. Singh also had to undergo a day-long competency-profile test that was administered by the André Filion and Associates group (Exhibit G-2, tab 2). The conclusions of the assessment in the Filion group report (“the Filion report”) of August 2013 were positive.

[33] In September 2013, the selection board decided that Mr. Singh had the necessary competencies to become Director of Human Resources at the Senate and recommended as a next step that he meet with the clerk of the Senate, at that time Mr. O’Brien, who reported to the then-Speaker of the Senate, Senator Pierre-Claude Nolin. Mr. Singh’s references checks were also positive. However, I note that in his comments, Mr. Singh’s former supervisor, Mr. Dorion, pointed out that Mr. Singh should not be micromanaged; rather, management should “trust him and empower him” (Exhibit G-2, tab 4).

[34] Mr. Singh explained that since he was employed in the public service, he came to the Senate through an Interchange Canada assignment. It meant that even though he was working at the Senate, he remained employed by the School. He started a one-year term with the Senate on October 31, 2013, in a position classified SEG-02 (Exhibit G-2, tab 6).

[35] Mr. Singh explained that the unique classification system at the Senate goes from SEG-01 to SEG-10 and that an SEG-02 is equivalent to an EX-02 in the public service, in terms of duties and responsibilities. However, during his Senate assignment, the School continued to pay his salary, performance pay, and benefits at the EX-01 rate. The School was reimbursed at the EX-01 group and level per the terms of the Interchange Canada assignment (Exhibit G-2, tab 5).

[36] Mr. Singh mentioned that as the Senate's director of human resources, he was responsible for the entire spectrum of human-resources functions. He had 20 to 25 employees reporting to him, including 3 direct managers: 1 for human-resources corporate matters; 1 for human-resources operations, official languages, and diversity, headed by one of his former clients, Angela Vanikiotis; and 1 for services to senators.

[37] Mr. Singh said that when he joined the Senate, he reported to Clerk of the Senate Mr. O'Brien, with whom he had an excellent relationship. Mr. Singh explained that Mr. O'Brien, who had created a very flat organization, had very little involvement with Mr. Singh's work. According to him, Mr. O'Brien entrusted him and told him at the beginning to manage and to involve him only when an issue arose that could concern or affect the senators.

[38] Speaking about Ms. Proulx, who was Director of Finance and Procurement and Chief Financial Officer when he arrived, Mr. Singh indicated that she was a colleague in charge of the Finance and Procurement Directorate and that she was classified SEG-03, compared to his SEG-02 classification.

[39] He explained that then, Mr. O'Brien assigned Ms. Proulx as his mentor. She carried out that role for just a few months because according to Mr. Singh, she was busy. Mr. Singh stated that there was a "lot of heat" in her sector.

[40] Mr. Singh explained that he and Ms. Proulx attended many meetings together often, if not daily, because the Human Resources and Finance and Procurement Directorates had to work together. He testified that they got along very well.

[41] Mr. Singh explained that part of his and Ms. Proulx's work was to attend Standing Committee meetings. The Standing Committee was chaired by Speaker of the Senate Senator Nolin, and included 15 senators as members. It met every Thursday when the Senate was in session. When Mr. O'Brien was still the clerk of the Senate, all directors were invited to sit in the room during those meetings.

[42] The Steering Committee was composed of three senators. It met every Tuesday night. Its role was to make routine administrative transactions and to prepare for the Standing Committee meeting on the coming Thursday. Contrary to the Standing Committee, not all directors were invited to attend its meetings. They could attend only on invitation from the senators, except for the directors of human resources and finance and the law clerk, who were expected to attend all meetings.

[43] Mr. Singh explained that his first year at the Senate went very well. He received his performance appraisal in July 2014 for the period covering fiscal year 2013-2014 (Exhibit G-2, tab 7).

[44] In August 2014, Mr. O'Brien offered to extend by six months the Interchange Canada assignment that was to end in October 2014 (Exhibit E-1, tab 3). Mr. Singh explained that it was done to allow Mr. O'Brien time to run an indeterminate staffing process for the position of Director of Human Resources.

[45] Mr. Singh explained that the staffing process for that position never took place. In November 2014, Mr. O'Brien announced his retirement, which meant that no staffing process was launched. Moreover, from December 2014 to February 2015, when he retired, Mr. O'Brien was almost never in his office.

[46] Mr. Singh testified that in January 2015, he was called to the office of Speaker of the Senate Senator Nolin, who told him that with Mr. O'Brien's retirement, he wanted to make changes to the Senate's administrative structure. Among other things, he wanted someone to head the legislative side and someone to be responsible for corporate matters and security. Mr. Singh indicated that since the Speaker asked him to keep things confidential, he researched an appropriate model by himself.

[47] Mr. Singh stated that in January 2015, he was called to the office of Mr. Pleau, Chief of Staff for the Speaker. According to Mr. Singh, Mr. Pleau clearly spoke on behalf of Speaker Nolin and told him that they had decided to go with the new structure of the Executive Committee and its three sectors chiefs: the chief legislative services officer, the law clerk and parliamentary counsel, and the chief corporate services officer.

[48] According to Mr. Singh, the positions of Chief Legislative Services Officer and Law Clerk and Parliamentary Counsel were already classified equivalent to EX-05, and Mr. Pleau insisted that the position of Chief Corporate Services Officer be at the same level, even though the Hay classification norm called for an EX-04 equivalent. In February 2015, the three chief positions were classified at an EX-05 equivalent.

2. Mr. Singh's letter of offer

[49] Mr. Singh testified that shortly after his January 2015 meeting with Mr. Pleau, he was again called to Mr. Pleau's office. Mr. Singh indicated that Mr. Pleau had found out that he was still on an Interchange Canada assignment and not a permanent Senate employee. According to Mr. Singh, Mr. Pleau was not happy about it since he thought it was not right for someone who was not a permanent Senate employee to work on high-level files.

[50] Mr. Singh indicated that Mr. Pleau asked him if he wanted the position of Director of Human Resources. After replying that he was interested and that he was being paid only at the EX-01 group and level, while the position was more at the EX-02 group and level, Mr. Singh testified that Mr. Pleau directed him to draft a letter of offer confirming him as the director of human resources and to bring it to Mr. Pleau before the end of the day. It was to be kept confidential.

[51] According to Mr. Singh, Mr. Pleau told him to put in the letter, "Whatever the f--- you want." In his testimony, Mr. Singh admitted that he was familiar with of the Senate's *Values and Ethics Statement*, *Code of Conduct*, and *Conflict of Interest Code for Persons Employed by the Senate*. He also admitted that he was expected to comply with those policies (Exhibit E-1, tabs 6, 7, and 8).

[52] Mr. Singh testified that he then went to his office and asked for a template for the letter of offer. As a model, he used one that had been used to appoint a Senate

colleague to the House of Commons and entered the salary that he thought was fair, given that he had been carrying out SEG-02 functions for a while but was being paid and was receiving performance pay based on an EX-01 salary. For the signing authorities, he added the names of Speaker Nolin and Clerk O' Brien and then sent it to Mr. Pleau, who had no questions about it (Exhibit G-2, tab 9). All parties signed it on January 19, 2015. As will be detailed later in this decision, the letter's drafting and its contents later became an issue with the Executive Committee, for which Mr. Singh was disciplined.

[53] At a luncheon on January 22, 2015, Speaker Nolin announced the Senate's new structure headed by the Executive Committee and managed by its three chiefs. Mr. Robert became Clerk of the Senate and the Clerk of the Parliaments. Mr. Patrice, already Law Clerk and Parliamentary Counsel, in addition became responsible for Parliamentary Precinct Services. Finally, Ms. Proulx was appointed Chief Corporate Services Officer and became responsible for among other things, human resources (Exhibit G-2, tab 13). At the same event, the Speaker also announced Mr. Singh's appointment to the position of Director of Human Resources. Mr. Singh reported to Ms. Proulx.

[54] Mr. Singh agreed that at the time, he was pleased with the new Senate structure, and that in January and February 2015, he still had a positive relationship with Ms. Proulx (Exhibit E-1, tabs 14 and 15). However, he pointed out that her management style differed from that of Mr. O'Brien in that she was more hands-on; he felt micromanaged.

[55] Mr. Singh indicated that he received congratulations for his appointment. Mr. Robert hugged him, and Mr. Patrice was happy for him. However, Ms. Proulx's reaction was not as pleasant. Mr. Singh said that she questioned how the appointment had been done. According to him, she also said that the Senate could not make an appointment that way. She never made a positive statement about his appointment, and her reaction hurt him.

[56] Since he had been appointed the director of human resources on January 19, 2015, Mr. Singh wrote to the School's president on January 22, 2015, to let her know that he was resigning from the public service (Exhibit G-2, tabs 11 and 19). He said that at that point, he had accumulated a considerable amount of vacation leave

in the public service, which he had never had the chance to take because of his heavy workload.

3. Notices of intent to appoint

[57] In January 2015, Ms. Vanikiotis was the manager of human-resources operations and official languages and diversity in the Human Resources Directorate. She specifically looked after executive-level appointments. Mr. Singh testified that she told him that Mr. Patrice had said that a notice of intent to appoint him as the director of human resources had to be issued.

[58] Mr. Singh said that he was not pleased about the notice. His view was that there was no requirement for the notice since his appointment had been effected via an external non-advertised process, which is not subject to recourse (Exhibit G-1, tab 14, pages 14 and 15). He was worried that his appointment might be grieved and that were the grievance upheld, he would be in trouble, because he had just resigned from the public service. Thus, he could end up out of a job.

[59] Mr. Singh spoke with Mr. Patrice about the notice, showed him the related policy, and told him that the Senate needed to withdraw the notice. Mr. Patrice refused and said that anyway, nobody would grieve it. Mr. Singh told Mr. Patrice that he was not following the policy (Exhibit G-2, tab 12).

[60] Mr. Singh pointed out that while the notice was issued for his appointment, none was issued for that of Ms. Proulx, which in his view went against the relevant Senate policy. He again visited Mr. Patrice about it and was told that Mr. Patrice had decided not to issue a notice for Ms. Proulx's appointment since he thought that one specific person might grieve it. In his testimony, Mr. Patrice categorically denied stating that.

[61] After reviewing the related emails (Exhibit G-2, tab 10), Mr. Singh maintained that Ms. Proulx had requested the notice of intent to appoint him; she had been involved.

[62] As will be demonstrated later in this decision, effectively, one of his employees grieved Mr. Singh's appointment.

4. Changes to the Senate's administrative structure

[63] Mr. Singh testified that when the new Executive Committee was brought in, a string of changes was announced. As a result, some people were moved. He complained that even though he was the director of human resources, he was not involved in those decisions and found out about them only afterward. He said that he met with the three members of the Executive Committee and that he raised the fact that some human-resources issues had not been addressed, such as classification.

[64] According to Mr. Singh, the three members of the Executive Committee acted like they were in the private sector. He indicated that the discussions were confrontational and that he was not happy that processes were not followed when they made their decisions. He testified that employees assumed that he was involved in the human-resources decisions. He said that he could have embarrassed Ms. Proulx but instead that he decided to tell the employees that he had not been involved and to refer them to Ms. Proulx.

5. Attending Standing Committee and Steering Committee meetings

[65] Mr. Singh testified that on February 4, 2015, all the directors at the Senate were informed by email that they would attend Standing Committee and Steering Committee meetings only if their respective chiefs asked them to (Exhibit G-2, tab 14). Mr. Singh explained that this was a departure from the past practice, in which all the directors were in the room for Standing Committee meetings and on invitation to those of the Steering Committee. He pointed out that he had always attended Steering Committee meetings as a standing member, without an invitation.

[66] Mr. Singh indicated that he met with Ms. Proulx about it and that he was told that it was the senators' decision and that it applied to him. He indicated that all the decisions that those committees make are about human and financial resources, so he questioned who would address those issues if he were not present at their meetings. He said that she responded that she would handle it.

[67] Mr. Singh asked to see the minutes showing that decision. Ms. Proulx refused, which shocked him. He said that before February 4, 2015, he prepared briefing notes for those committees, which he spoke to. He gave as examples three standing reports (on official languages, training, and employment equity) that he prepared and

presented every year to the committees. He did not know if they were presented after February 2015.

[68] In cross-examination, Mr. Singh indicated that he brought this matter to the Executive Committee, which did not explain the senators' decision. He stated that he did not recall Ms. Proulx providing the reasons for the decision, despite what is in her notes (Exhibit G-2, tab 29, page 2).

[69] As a result of that decision, Mr. Singh mentioned that from February to July 2015, he probably attended four or five Standing Committee meetings and that he was asked to attend four to six Steering Committee meetings. After that, he did not attend any more.

[70] Mr. Singh testified that as a result of the decision, he did not know the human-resources issues that were discussed and stated that Ms. Proulx did not share what transpired at those meetings. He said that after February 4, 2015, he still wrote some briefing notes, for instance at Mr. Pleau's request, but he did not know if they were even discussed. He also found out that his staff prepared briefing notes without him being made aware of it. Mr. Singh testified that when he attended executive meetings chaired by Ms. Proulx in her sector, he realized that other directors continued to attend the meetings, on invitation, but not him. Despite that, he said that he did not think that it was all racially motivated.

[71] In cross-examination, Mr. Singh maintained that twice, Ms. Proulx brought one of his employees to a Standing Committee meeting without informing him. He stated that Gilles Duguay, who was Director General of Parliamentary Precinct Services and who reported to Mr. Patrice, attended more often than he did. However, he admitted that the precinct was a hot topic at the Senate during the summer of 2015 because of the shooting that happened in the fall of 2014 on Parliament Hill but insisted that the work being done on the precinct file involved human-resources issues.

[72] He also agreed that during that summer of 2015, no Standing Committee meeting was held, and that the Steering Committee met only two or three times. Furthermore, since there was a federal election in the fall of 2015, the House of Commons and the Senate returned to sitting only in December 2015. Therefore, from June to December 2015, no regular Standing Committee meeting was held, and the Steering Committee met only two or three times.

[73] Mr. Singh also said that every two weeks, he held a meeting with Ms. Proulx, which was different from Mr. O'Brien's methods, who met with him only rarely and only if there was an issue. Mr. O'Brien never went to Mr. Singh's employees directly. However, in his testimony, Mr. Singh admitted to holding bilateral meetings with his staff.

6. The Senate's compensation study

[74] In his testimony, Mr. Singh spoke about the Senate's compensation study. It dealt with a long-standing issue of examining and comparing the compensation of senators' office staff. Mr. Singh indicated that in April 2015, the Human Resources Directorate was ready to issue its report, but that Ms. Proulx became increasingly involved in the related minutia. According to him, she reread every letter that was to be issued to senators' staff and redid each calculation. Originally, she had wanted to sign the letters but changed her mind, so he had to sign them. According to Mr. Singh, this frustrated his staff significantly, and in the end, it was a waste of time.

[75] When he was asked if he was aware that Ms. Proulx had been involved in a similar process a few years before, Mr. Singh said that he was aware of that and that it had not been successful. When he was asked if she really went through the 300 letters, Mr. Singh maintained that she was involved in all the calculations but agreed that as the chief corporate services officer, she had the prerogative to become involved.

7. The chief financial officer development program

[76] Mr. Singh testified that once Ms. Proulx was appointed Chief Corporate Services Officer, the need arose to fill the position of Director of Finance and Procurement and Chief Financial Officer. He gave her the names of some potential candidates and suggested to her establishing a chief financial officer development program for future recruitment. The program's goal would be to develop people over time with the view to eventually appointing a new director. He stated that the program's purpose would also be to help recruit members of visible minority groups. Ms. Proulx thought it was good idea, and the program was announced in April 2015 (Exhibit G-2, tab 18).

[77] Mr. Singh testified that after the program was launched, he did not expect Ms. Proulx to be involved. He pointed out that it was a development program that involved people who were not at the executive level; therefore, he did not see the need

for someone classified EX-05 to be involved. Moreover, he did not appreciate her telling him who in his directorate should be assigned to the project.

[78] In his testimony, Mr. Singh qualified Ms. Proulx's intervention as "insane". In addition, he disagreed with the fact that she designated H el ene Bouchard, Director of Information Services, to replace her on the selection board for the program. He testified that he viewed Ms. Proulx's intervention as meaning that "he was out" and as another expression of her bias toward favouring French Canadians (Exhibit G-2, tab 19).

[79] Mr. Singh stated that he was not consulted as to the composition of the selection board for that program. Nor was he part of it, despite his considerable advisory experience. He maintained that he would have done things differently had he been involved. The selection board included Ms. Bouchard; Bonnie Marga, Director of Finance and Procurement and Chief Financial Officer on an acting basis; and a consultant, Hugues St. Pierre.

[80] Mr. Singh indicated that the selection board did not qualify any of the internal candidates, which was very disconcerting, since it basically sent the message that the Senate was not prepared to invest in its people.

[81] While the selection board included a member with a disability, Mr. Singh insisted that despite the fact that two of the four applicants were members of visible minority groups, the board did not include a member of such a group, which was contrary to best practices to eliminate bias. He referred to the Senate's staffing and recruitment strategy, which guides managers to ensure a diverse and representative workforce (Exhibit G-1, tab 13, pages 3, 5, and 9). He also referred to the Senate's employment equity policy, in which the Senate recognizes the need to increase representation in the designated groups of women, aboriginal people, persons with disabilities, and members of visible minority groups (Exhibit G-1, tab 15).

[82] On that note, Mr. Singh complained that the Senate had very few strategies to improve the representation of visible minorities. He insisted that while the Senate's visible-minority employees might have increased, nevertheless, out of 30 managers, only 4 were from a visible minority group, and they left shortly after he did (Exhibit G-1, tab 8, page 12).

[83] In cross-examination, Mr. Singh agreed that at the relevant time, he never raised the issue that the selection board had no visible-minority member, nor did he offer to Ms. Proulx that he could sit on the selection board. He also agreed that she had no involvement with the board's work. As to why he signed the board's recommendation, he said that the extent of his role was only to verify whether the staffing file was complete.

8. Mr. Singh's disciplinary hearing and the letter of reprimand

[84] As mentioned earlier in this decision, the notice of intent to appoint Mr. Singh to the position of Director of Human Resources was grieved. He testified that on April 2, 2015, at a meeting, Ms. Proulx told him that as the final level of the grievance process, she had dismissed the grievance (Exhibit G-5). However, she also told him that during the investigation of the grievance, some questions were raised about his letter of offer. She took notes at the meeting. Michel Bédard, the Senate's counsel, also attended (Exhibit G-2, tab 16).

[85] On May 5, 2015, Ms. Proulx wrote to Mr. Singh and invited him to attend a disciplinary meeting to determine whether he had breached the standards of conduct when he prepared his letter of offer in which he established his salary, waived the probation period, and transferred some 300 hours of vacation leave.

[86] On that same day, in a telephone discussion with Ms. Proulx about the interview, Mr. Singh said that he told her that he did not understand why there was an issue since Mr. O'Brien and Speaker Nolin had signed the letter. In cross-examination, he denied telling her that it was "bullshit" and that he completely disrespected Mr. Patrice (Exhibit E-1, tab 11 over).

[87] The disciplinary meeting was originally set for May 7 but effectively took place on May 15, 2015. The three members of the Executive Committee were present; so was Mr. Bédard. Mr. Singh was accompanied by Denis Desharnais, for whom he had worked at the Department of Public Safety and Emergency Preparedness.

[88] In addition to the fact that as the director of human resources, Mr. Singh prepared his letter of offer, the following three things in it were at issue at that meeting:

- he had set his salary;

- he had waived his probation period; and
- he had transferred his 300 hours of leave from the public service to the Senate.

[89] The letter of offer indicated that the salary was to be \$132 500. Mr. Singh told the Executive Committee that on January 12, 2015, Mr. Pleau had told him that since he had been performing work at an SEG-02 or EX-02 level, he should receive that salary. The EX-02 maximum salary was \$139 300. In January 2015, since he was still being paid as an EX-01, Mr. Singh was earning around \$125 000 (Exhibit E-2, tab 7). He explained that he made the adjustment and that he considered that his performance pay was limited per the terms of the Interchange Canada assignment. As a result, he came up with a salary of \$132 500, which was still less than the maximum of \$139 300 for an EX-02 or SEG-02 equivalent (Exhibits G-2, tab 5, G-6, and G-8).

[90] Mr. Singh admitted that he did not verify with anyone, including Ms. Vanikiotis, who would normally prepare these letters, whether the Senate accepted the new salary, the waiving of the probation period, and the leave transfer. Also, in January 2015, he did not tell Mr. Pleau that the new salary would not be at the lower end of the EX-02 salary scale because Mr. Pleau had told him to put whatever he wanted in the letter. He assumed that Mr. Pleau and Speaker Nolin had read it. They certainly signed it and said nothing. As for Mr. O'Brien, Mr. Singh indicated that he had been at the Senate for over 30 years and that he read everything.

[91] As for not including a probationary period, Mr. Singh explained to the Executive Committee that he had been in the position for over 18 months, which was beyond the 12-month probation period; therefore, he waived it.

[92] With respect to the leave transfer, Mr. Singh told the Executive Committee that as a template for the letter of offer, he chose one that had been used to transfer a Senate employee to the House of Commons, including vacation leave. He said that at a meeting, Mr. Bédard showed him the policy on terms and conditions of employment, which states that such a transfer cannot be done. Mr. Singh then admitted not knowing about those terms and conditions and apologized for the mistake. He indicated that he did not check the Senate's leave-transfer policy and stated that he was remorseful and embarrassed.

[93] On June 1, 2015, Mr. Singh met again with the Executive Committee and Mr. Bédard. He was informed that the vacation leave would be cashed out. As for the

salary and the probation period issues, they said that they did not agree with him but that they were prepared to move on. According to Mr. Singh, at the end of the meeting, the committee was fine with the two issues.

[94] On June 12, 2015, the Executive Committee imposed a letter of reprimand on him for his actions (Exhibit G-2, tab 22). Mr. Singh indicated that he did not agree with the letter, but since he did not want to rehash the matter, he did not grieve it.

[95] In cross-examination, Mr. Singh admitted that the Executive Committee could have been harsher, in terms of discipline. He also explained that a couple of weeks after the disciplinary meeting, he and Ms. Proulx talked about being “more polite”, so he was more polite in his email to her on June 25, 2015 (Exhibit E-1, tab 18), which reads as follows:

Nicole, thank you for including me on this email. I do not want to destroy what I consider a developing friendship.

I promise, that as a first step, I will be more polite in my written communication with you and hope we ca [sic] resolve any difference we may have.

Have a good evening,

Darshan

[96] Later in his testimony, Mr. Singh talked about a situation in which a harassment complaint was made against one of Mr. Patrice’s directors general. After an investigation was carried out, Mr. Singh said that some allegations were founded but that the Executive Committee decided not to impose discipline, despite Mr. Singh and Diane Blais’ recommendation. He stated that the person who made the complaint was fired, against his recommendation.

9. Ms. Vanikiotis’s Interchange Canada assignment and sick-leave requests

[97] Mr. Singh testified that around May 5, 2015, when he was informed that he would be called to a disciplinary meeting, one of his direct report, Ms. Vanikiotis, spoke to him about an assignment opportunity for her. He indicated that although she reported to him and that he had the delegated authority to agree to an Interchange Canada assignment, he told Ms. Proulx about it. She had reservations about it. She raised it with Mr. Patrice and Mr. Robert and spoke privately with Ms. Vanikiotis (Exhibit G-2, tab 20).

[98] Mr. Singh said that he was not pleased with this. He raised it at a meeting in May 2015 with Ms. Proulx and Mr. Patrice. Mr. Singh said that he prepared notes in anticipation of the meeting (Exhibit G-2, tab 21).

[99] Mr. Singh said that at the meeting, he told Ms. Proulx that she was micromanaging him and that she should not directly access his people. He also told her that he believed that she would not behave that way toward Ms. Bouchard. He indicated that he did not raise all the points he had placed in his pre-meeting notes but that certainly, he told Ms. Proulx to stop micromanaging him, and he raised the issue of trust.

[100] In cross-examination, Mr. Singh denied that there was tension between him and Ms. Vanikiotis and said that she was good at and professional in her job. He was also asked to explain why he refused granting her sick-leave request in February 2015. He responded that he had only followed the instructions on granting leave, which he disagreed with, and that Ms. Proulx had provided the day before Ms. Vanikiotis's leave request. He maintained that had Ms. Proulx not been involved, there would have been no issue (Exhibit G-2, tab 15).

10. Leadership development program for procedural and legislative clerks

[101] Mr. Singh testified that on June 12, 2015, Mr. Robert announced a "Leadership Development Program for Procedural and Legislative Clerks" in his sector. Mr. Singh testified that he had not been informed of it and that Ms. Vanikiotis told him about it on that day. According to him, Mr. Robert went behind his back and dealt directly with his staff to put that program together, and Ms. Proulx was aware of it but did not tell him about it (Exhibit G-2, tab 23).

11. Proposed changes to the Human Resources Directorate

[102] Mr. Singh testified that still in June 2015, Peter Nunan, Senior Labour Relations Advisor, was offered a secondment of six to nine months outside the Human Resources Directorate, which thus required some changes. On June 17, Mr. Singh emailed Ms. Proulx, asking for her comments if, in his words, "she needed" to express them. Still on this issue, he emailed her again on June 19, asking for her comments but with the caveat that she should let the managers manage. On June 21, she forwarded Mr. Singh's email to Mr. Patrice, adding only, "Grrr" (Exhibit G-7). Mr. Singh's emails read as follows (Exhibits G-2, tab 24, and G-7):

[The June 17 email:]

Bonjour Nicole,

As discussed yesterday, this is what we are proposing for changes in HR. Please note that all the managers are on the same page and in agreement. I have not copied them so you have an opportunity to respond to me directly if you need to

...

[The June 19 email:]

Bonjour Nicole,

Here are the proposed changes and the draft org. chart for your comments.

Also, according to the delegation of authorities' matrix, these proposed changes are within my authority as there are no indeterminate appointments or assignments greater than 6 months, no reclassifications, etc. Though I share them with you out of respect, I fully expect to be able to follow the words of the Speaker which are let managers manage.

Merci

Darshan

[103] Still on June 21, 2015, at 09:03, Ms. Proulx indicated that she was not comfortable with the proposed changes. A few minutes later, at 09:22, she emailed again, still questioning the reorganization's proposals and pointing out that "... HR has to be purer than pure ..." (Exhibit G-2, tab 25). She stated: "Bonjour Darshan ... As you know, HR has to be purer than pure in its HR activities and I find that the proposal has some areas of concern ..." (Exhibit G-2, tab 25).

[104] Mr. Singh responded that this was an example of micromanaging and that he would bring it to another level. Ms. Proulx indicated that the matter would be discussed at the executive level, to which he responded on June 23, 2015 (Exhibit G-2, tabs 24 and 25), with: "Nicole, You are, of course, free to do as you wish and given how rarely HR is invited to ... the Executive Committee, it will be a novelty. For clarity purposes, however, and for the record, you are wrong on the next level."

[105] Mr. Singh admitted that his email response to Ms. Proulx was sarcastic but nevertheless maintained that he stated a fact in it. He also admitted that some of the proposed changes were at the managerial level, which would require Ms. Proulx's involvement, and that her approval was needed for requests for additional staffing

actions, such as the creation of a shadow position for business system (Exhibit G-1, tab 17, pages 2 and 3).

[106] Mr. Singh also agreed that a supervisor has the right to question and raise concerns even when staffing authority has been delegated to a subordinate. Nevertheless, he expressed that in this case, he was subject to extra scrutiny, to which the other director, Ms. Bouchard, was not. He also stated that it was “crazy” in the sense that Ms. Proulx intervened in matters in which she did not have to be involved.

[107] Mr. Singh testified that their relationship involved the clash of what he wanted versus what she wanted. In his view, she questioned his ethics. She became involved in matters that did not require her involvement, which made him feel like he had done something wrong. He said that he wanted to talk to Senator Housakos or to Deputy Chair, Senator George Furey, about it. If that could not happen, he would raise it with the Steering Committee. He indicated that Ms. Proulx’s micromanagement was harassment, as defined in the Senate’s related policy (Exhibit G-1, tab 16, page 12).

12. Two Executive Committee meetings and conference attendance

[108] Mr. Singh testified that after sending his June 23, 2015, email to Ms. Proulx, he attended a meeting with the Executive Committee. He had prepared some notes in anticipation (Exhibit G-2, tab 26). Going over them, he said that he brought up the subject of his race at the meeting, along with the fact that he felt ostracized and isolated and that Ms. Proulx treated him differently because he was not French Canadian, unlike anybody else reporting to her.

[109] Mr. Singh testified that he also raised the fact that his attendance at the Canadian Association of Parliamentary Administration conference had still not been approved but that Ms. Bouchard’s attendance had been. He said that Ms. Proulx took notes but that she but did not really address his concern.

[110] Mr. Singh later testified that he found out only two weeks before the Canadian Association of Parliamentary Administration conference that he was to attend, while Ms. Bouchard had known four months in advance. Ms. Proulx also attended. Mr. Singh said that he had never heard of a Senate directive limiting the number of participants at an external conference to two employees (Exhibit G-9). Mr. Singh testified that the

three of them finally went to the conference and that they had a good time; they even danced together!

[111] When he was asked about Point 4 of his pre-meeting note, stating, “When you are always defending, a strategy that can be used is to attack! I can’t wait for the mgt [sic] retreat”, Mr. Singh could not explain what it was directed to and indicated that he never said it at the Executive Committee meeting (Exhibit G-2, tab 26).

[112] Mr. Singh indicated that also raised at that Executive Committee meeting was the question of who would handle a complaint made against an Executive Committee member. He said that Mr. Patrice answered that it would be one of the two other chiefs. Mr. Singh said that he told Mr. Patrice that that was not appropriate and that it did not match the relevant policy.

[113] As to the comments Mr. Singh would have made about Ms. Proulx’s human-resources qualifications, which are part of her notes, stating, “Nicole is not an expert in HR — not qualified to make decisions on HR” (Exhibit G-2, tab 29, page 2), Mr. Singh said that he told Mr. Patrice that Ms. Proulx was not qualified to speak to senators about human-resources matters. He indicated that the three members of the Executive Committee were agitated at the meeting and that so was he, probably (Exhibit G-2, tab 29 -Ms. Proulx’s note).

[114] Mr. Singh indicated that the discussion was pursued later that afternoon with Mr. Patrice, who asked him what was the matter. Mr. Singh replied, “It used to be the three of you and me. Now it is the three of you without me.” He said that he used to be consulted and that it happened no longer. He did not know where they got their opinions from, and he felt excluded.

[115] Mr. Singh said that at that point, Mr. Patrice asked him if he was happy in his position. Mr. Singh answered that he was but that he was not happy about how things were going.

[116] Mr. Singh testified about a second meeting with the Executive Committee, likely in August 2015, at which, among other things, he again raised the issue of being excluded from the Standing Committee and Steering Committee meetings, and he again asked to see the record of the decision to the effect that directors at the Senate

would attend those meetings only if their respective chiefs asked them to. He said that his request was denied (Exhibit G-2, tab 29, page 2 of Ms. Proulx's notes).

13. Proposed changes to the Human Resources Directorate (continued)

[117] Once more on the issue of the changes to the Human Resources Directorate and Mr. Nunan's secondment, Mr. Singh testified that after his June discussion with Ms. Proulx on the subject, in July or August 2015, he prepared a document on the proposed changes to the Human Resources Directorate and gave it to her in late August or early September 2015 for her consideration (Exhibit G-2, tab 28).

[118] On September 10, 2015, Mr. Singh had a meeting with Ms. Proulx. They again discussed changes to the Human Resources Directorate. The issue of employees' assignments was still an ongoing disagreement. Specifically, they discussed who would replace Mr. Nunan during his secondment. According to Mr. Singh, Ms. Proulx did not accept or deny the proposal about that issue. He maintained that she wanted to appoint Ms. Blais as a replacement for Mr. Nunan, and he was of the view that Ms. Maria-Chantal Eynoux was the better choice, especially since Ms. Blais had been away from the Senate for few years; she returned in 2014. He also indicated that Ms. Eynoux is black.

[119] Ms. Proulx's notes of that meeting were filed as an exhibit (Exhibit G-2, tab 30). Mr. Singh testified that on September 16, 2015, he received, in a sealed envelope, a letter from Ms. Proulx about the September 10 discussion (Exhibit G-2, tab 31). He stated that she still insisted on replacing Mr. Nunan with Ms. Blais. Mr. Singh testified that while Ms. Proulx's letter was not a letter of reprimand, it was very formal. He interpreted it as a threat with consequences if he did not do what she wanted. Therefore, he did not challenge her letter.

[120] However, he did email her September 28, 2015, about a revised staffing strategy. He pointed out that he did not have to do it but that he respected her requirements. She replied on October 13, 2015, and he responded on October 14 (Exhibit G-2, tab 32).

[121] Mr. Singh said that he had bilateral meetings with his employees every two weeks. At one such meeting with Ms. Blais, he found out that Ms. Proulx had offered her the chance to replace Mr. Nunan during his secondment. Mr. Singh said that Ms. Blais and Ms. Proulx used to work together and that they were friends. Later on, he

nuanced that affirmation; he stated that he did not know if Ms. Proulx and Ms. Blais were friends outside work and that Ms. Proulx “had a lot of friends”. Finally, he indicated that he had had no choice and that he assigned Ms. Blais to replace Mr. Nunan (Exhibit G-2, tab 33).

14. Human Resources Directorate functional review

[122] Mr. Singh testified that in June 2015, Ms. Proulx informed him that the Human Resources Directorate was to go through a functional review exercise. He indicated that the Senate’s Communications Directorate had just gone through one after an Auditor General audit, and the senators wanted it followed up. An external firm had been hired to review the functions in the Communications Directorate, the way the work was being done, etc. As a result, according to Mr. Singh, the entire Communications Directorate was “annihilated”; every job was lost.

[123] Mr. Singh testified that he questioned the need for a functional review of the Human Resources Directorate and asked who had decided that one was needed. At some point, he was told that the senators had made the decision. He said that he wanted to know why he was not involved in the related discussion with the senators.

[124] In Mr. Singh’s view, at that time, the Human Resources Directorate was functioning much better and was receiving considerable praise for its work, including from the Executive Committee. In his opinion, the Finance and Procurement Directorate should have been obvious choices for such a review. They had never had one. Mr. Singh testified that some consultants began the Human Resources Directorate functional review in October or November 2015, which was about the time that Ms. Proulx lost her father and was involved, as a witness, in the trial of Senator Mike Duffy (“the Duffy trial”).

15. Legislative sector retreat

[125] Mr. Singh testified that in November 2015, Mr. Robert asked him to attend a legislative sector retreat and to present to the employees of that sector. Mr. Singh said that the presentation went well but that during the plenary, a young black man asked him why the Senate did not have any person of colour in a senior position. Mr. Singh said that he was at the podium when the question was asked and that he did not really have an answer but that he tried to make light of the question while not embarrassing

anyone. He told the young man that it was a serious issue, that the Executive Committee was very committed to diversity, and that more training was needed.

16. The Senate's main estimates

[126] Mr. Singh explained that the Senate has a main-estimates process, in which in the early summer, the directorates identify their financial needs for the next fiscal year. Their requests then go the Standing Committee's Subcommittee on the Senate Estimates for approval roughly in November. Mr. Singh indicated that it is a good opportunity for the directors to explain their programs to that subcommittee.

[127] Mr. Singh went through the exercise in 2014, but since he was new and wanted a better feel for his directorate's needs, he did not ask for additional resources at that point. Such requests are made through "capsules", which are a kind of template or briefing note presented to the subcommittee in which the need for additional resources is explained, along with the cost.

[128] However, in 2015, he intended to ask for funding for a shadow person for his data employee. And he wanted funds for the training of senators' staff that they had asked for.

[129] Mr. Singh testified that he told Ms. Proulx about his plan at a meeting in August 2015 and stated that she was supportive. He talked to her again about it a month later and stated that she "did not say no". In early October, he prepared his two capsules.

[130] Mr. Singh said that on Monday, November 16, 2015, Pascale Legault, newly appointed Director of Finance and Procurement and Chief Financial Officer, and Ms. Proulx, who had returned to work after two weeks following her father's death, came to his office. They danced and held hands in his office and began to attack him verbally. Ms. Proulx asked him why the two capsules he had prepared were still there, while Ms. Legault told him to pull them. He said that he was under the impression that he would have a chance to discuss his capsules at Ms. Proulx's management meeting.

[131] Mr. Singh said that he felt humiliated and that he wondered how Ms. Legault, who just started to work for the Senate, could tell him what had to be done. In his view, she and Ms. Proulx were good friends, and it was obvious that they had been talking behind his back (Exhibit G-2, tab 34). In his testimony, he maintained that

Ms. Proulx never told him that she wanted the Human Resources Directorate to absorb the cost of a shadow position or that with respect to training senators' staff, she wanted to wait for the Human Resources Directorate review exercise. She told him not to go ahead with the two capsules.

[132] In cross-examination, when he was asked about the November 16 meeting, Mr. Singh nuanced his reply and indicated that there had been no dancing, that nevertheless, Ms. Proulx had not been solemn, and that both Ms. Proulx and Ms. Legault had been happy.

17. The November 24 email

[133] Mr. Singh testified that the week following the November 16, 2015, meeting with Ms. Proulx and Ms. Legault had been difficult. He could not talk about it and decided to put his thoughts on paper. He wanted to tell Ms. Proulx how he felt. He was angry, humiliated, and upset. He was at a breaking point; he did not sleep well.

[134] Mr. Singh felt that he no longer had any responsibilities. The last time he had seen a senator had been in June, and the Executive Committee had no time for him. Ms. Proulx went directly to his staff. He decided to send her the November 24 email. He pointed out that as of then, it was not a formal complaint, and that he wanted to write to her out of emotion, to make her aware of his concerns. He also wanted to address the senators' concerns about receiving human-resources information. According to him, the senators felt that the former boss, Mr. O'Brien, had been "running the show", not them. Mr. Singh thought they needed to be informed about things. He pointed out that never before had he made such a complaint.

[135] Since in the hearing, the content of the November 24 email was referred to often, and since it was an important part of the decision to terminate Mr. Singh's employment, I think it is important to reproduce it in its entirety, as follows (Exhibit G-1, tab 1):

From: Singh, Darshan

To: Proulx, Nicole

Nicole,

I am writing this response to you today as I did not want you to think that I was writing out of emotion. I am also cognizant of the

fact that you have been going through a lot recently (Duffy trial and your father's passing). Please know that I have given this much thought and am writing because I believe that I need to put these words on paper to protect myself and to protect the HR Directorate.

I am deeply concerned with the current decision making process in the Senate Administration and the way that HR information is being presented to Senators. I am deeply loyal to this organization and have serious concerns relating to:

- 1) Senators not receiving accurate information;*
- 2) Options not being presented to the Senators for their decision making;*
- 3) Only selected pieces of information being provided to Senators.*

The main issue I have is that I believe you are proceeding contrary to what is in the definition of our roles. We are to provide all information to Senators, whether they wish to receive it or not, that is required in order for them to make decisions. We do not get to make decisions for them. When you choose to present only one option, you are basically telling them that the decision is made by Senate Administration. You are not presenting Senators with complete information so that they can carry out their role effectively. You are making decisions for them.

I do not want this to appear to be related to training only. This is an issue that has been ongoing for quite some time under the new leadership. I now have several different instances where you have chosen to provide only specific information to the Senators and not provide complete information.

You are correct in your email when you say that you are the person ultimately responsible for Corporate Services. You were also correct in the letter that you presented to me on September 16, 2015 where you stated that the position which I occupy, reports to the Chief Corporate Services Officer, not the Executive Committee. However, as per my job description:

“As the senior human resources executive of the Senate, the Director is accountable for developing, recommending and implementing the total range of policies and programs affecting human resources management requirements in support of operations, highly sensitive issues of the Senate and Senators' offices, and for providing leadership with respect to implementing the Senate's role as employer under the Parliamentary Employment and Staff Relations Act (PESRA).”

As I have not been at any Steering Committee or Internal Economy meeting, I am not aware of what recommendations relating to HR are being given. Therefore, I request, that when you present information relating to HR, that you clearly state it as your own opinion and not the opinion or information provided to you by HR. This becomes difficult for me to defend as was evidenced by the

information you provided to Senator Wells regarding compensation rules which simply do not exist.

I also want to touch on another matter which has been bothering me for quite some time. In my role, at all times, I am required to present the Senate as a modern employer that encompasses the beliefs of a healthy and respectful workplace. Last week, during the Legislative Sector retreat, I had to comment on a question from an employee wondering why we do not have a representative amount of persons of colour in management positions. I told the employee that we are working to fix this issue and that I have never felt lesser in front of any of my colleagues. I want to tell you today that this is untrue. I have not felt like I am treated differently with the other members of the Executive Committee or Dr. O'Brien (the former Clerk). I have however, repeatedly felt it with you. You may ignore this claim but it is real and a source of stress and discomfort for me. Similarly to how women are able to tell if a man is looking at them in an inappropriate manner, persons of colour can also sense this. I also want you to know that I have heard this from other employees that fall under the purview of the CCSO. I also noted this when I presented Maria-Chantal's (SEN-10) name as a possible replacement for Peter Nunan. Despite the fact that you had seen her cv and has received positive feedback from clients which you yourself told me about, you an (EX-05) stepped in and put forward the name of an old friend and colleague who you felt more comfortable with (a SEN-09). You relayed this name to me on at least 3 occasions an even went as far as speak to the employee directly without notifying me.

To put it simply, I do not feel like I am being treated equally and fear that it is racially driven rather than based on my performance.

All of your direct reports are white and all of your direct reports are French Canadian. All of your direct reports have been present in Steering Committee meetings or Internal Economy Committee meeting, except for me. This is more than just coincidence. I would like for this unfair treatment to stop immediately. I am being singled out, and it is for more than just me giving my opinion. My opinion, by the way, is the reason I am in this position. If you wanted someone to simply say yes to your every request, then Senator Nolin did not select the right person for the position.

I also want to note that all 4 applicants in the CFO Professional Development Program were Anglophones and that 2 of the 4 were visible minorities. Yet, you did not qualify any of them. One of the 4 was already in an EX position, and 2 others have since qualified in EX pools.

Some other matters of concern:

Whenever I have raised my concerns with you, you often have said that there is not enough time to complete a task or that it is not the right time. I do not feel any support from you and unfortunately I believe that it will never be the right time and that you will never

have enough time to complete HR related responsibilities. The following excerpt from your job description clearly identifies your overall responsibility towards HR and does not discuss working on specific files:

“In this innovative executive structure, all three share in the direction and planning of the Administration in order to provide effective and efficient support to the Senate generally and to the Speaker of the Senate and the CIBA specifically.”

As I have expressed on numerous occasions, thought you are ultimately responsible for HR, you also hold the notion that you are responsible for my specific tasks. This is not accurate. Your job description is very specific in regards to HR responsibility as is mine. I would ask that you respect your responsibilities and allow me to do my job. I will not comment on your job, but I will comment on mine by saying that I am the most qualified person in the Senate Administration to be leading HR and am unfortunately being left out of all HR decisions. I would ask that you allow me to do my job and that you stop micro-managing my duties. This again, is unfair treatment and I am left to wonder why.

I also want it to be noted that on many matters relating to HR, I am not consulted by the Executive Committee prior to a decision being made. When you and the committee speak to management, and tell them that you are about to make a change, it implies that I have been consulted. I would ask that you clearly state to those in attendance that this is a decision of the Executive Committee and that neither I nor my team were involved. This has happened on numerous occasions such as when the new leadership structure was presented or the IIA posted was issued.

I also want it to be noted that my opinion or advice is not usually followed when dealing with disciplinary matters. This was the case for the recent harassment and workplace assessment case that took place within the Administration.

I would also like to note for the record that many, if not all, of my colleagues have expressed major concerns with the leadership currently being shown. I admit that I have been the most vocal in my opinions, but that my colleagues will not speak up as they are in fear. I only speak up as I would like to remain true to one of my core values. “If you do not speak up when you see wrong being done, than you are as guilty as the person(s) committing the wrong.”

I would like it to be noted that I still have not been provided with any legitimate reason as to why the HR Directorate is undergoing a review. Logic would dictate that given the year and a half that the Finance and Procurement Directorate has undergone, including the results of the audit, the fact that 15 Senators are under investigation by the RCMP and the complaints of Senators related to Finance and Procurement rules, that this would be the place to start. Yet, for some reason, unbeknownst to anyone, you have chosen to have a review of HR done. There are only two

reasonable assumptions that can be made - favouritism for your former Directorate or discriminatory practices

Your appointment was also a non-advertised appointment, yet the rules were apparently different for your appointment and one of your colleague's appointments than they were for mine. There is only one reasonable assumption that can be made - discriminatory practices.

I also want to note that the leave rules upon hiring for the new CFO were able to be amended with no challenges from you, but for me were cause for a disciplinary hearing, despite the Clerk's and Executive Committee's approval of my hire. Again, why?

Though I could go on, on many matters related to our time together, I want to formally request the following:

- 1) I would like to request that the HR Directorate be temporarily moved under the leadership of one of the other Chiefs;*
- 2) In the event that you do not meet request number 1, I would like to request that all information that is provided to Senators, the Executive Committee, or to any client, should be assumed to not be coming from HR unless I have put in writing that HR agrees to what is being presented;*
- 3) I ask that the Executive committee, or any of its members, that speak to changes, decisions, or initiatives, ensure that it is communicated that HR was not consulted;*
- 4) That a vision or mission statement for the Administration be communicated in writing to all employees;*
- 5) That the behaviour of treating me differently than my colleagues stop immediately;*

I know that this email will cause you some discomfort. I do not need to discuss it any further as I have put my concerns in writing. I do not require a response. Simple decisions on my requests are all that I require.

My primary concern remains a commitment to serving Senators. I believe that all information should be shared with them and that the appropriate persons be there to provide them with counsel.

Thank you,

Darshan

[Sic throughout]

[136] During his testimony, Mr. Singh reviewed the email and commented on it. Some of the issues in it have already been covered in the retelling of his testimony.

[137] For instance, Mr. Singh returned to the fact that he felt that Ms. Proulx was treating him differently because of his race. He said that if he was told that he is

competent, by those including Mr. Patrice and Mr. Robert, the only explanation for Ms. Proulx's behaviour was that it was based on his race. He pointed out that some of her other employees felt the same as he did. He also noted that she wanted to assign Ms. Blais, who in his view was her old friend, instead of Ms. Eynoux, who is black, to replace Mr. Nunan.

[138] Mr. Singh insisted that at that point, he had not been provided with the reason for the Human Resources Directorate functional review. In his view, it was because Ms. Proulx did not want senators to review the Finance and Procurement Directorate since she had been specifically responsible for it before becoming the chief corporate services officer.

[139] Returning to the fact that his appointment was subject to a notice of intent to appoint, which was not issued for Ms. Proulx's appointment, Mr. Singh maintained that the Executive Committee contravened the Senate administration staffing and appointment policy and its appendix. In his words, "Why make it more difficult for the brown Anglo [*sic*] man and not for the white woman?"

[140] Mr. Singh also testified about two separate incidents not covered in his November 24 email. He stated that in 2013, one of his senior advisors told him that there was a problem with a senator who was not Caucasian. Mr. O'Brien called Mr. Singh and Ms. Proulx to a meeting. Mr. O'Brien asked Ms. Proulx for her views about the issue. According to Mr. Singh, she replied, "These people are like that."

[141] Mr. Singh also referred to another incident in which another senator who was not Caucasian was the subject of very serious sexual impropriety allegations. Mr. O'Brien again invited Ms. Proulx to a meeting to obtain her views. Mr. Singh indicated that again, she would have said, "These people are like that." He testified that he asked her what she meant by that. She replied, "You know, those senators all have big egos."

[142] Mr. Singh insisted that the request in the November 24 email to have the Human Resources Directorate report to another chief was not strong but rather was reasonable.

18. Events after the November 24 email

[143] Mr. Singh testified that the day after he sent the email to Ms. Proulx, he was called to a meeting in Mr. Robert's office. Mr. Patrice was already there. Mr. Patrice did the talking and said that the email would be treated under the *Senate Policy on the Prevention and Resolution of Harassment in the Workplace* ("the harassment policy") and that an outside firm would investigate it (Exhibit G-1, tab 16).

[144] Mr. Singh was also told that he and the Human Resources Directorate would report to Mr. Robert until the investigation was completed and that Mr. Robert and Mr. Patrice would inform the senators. Mr. Singh understood that the allegations to be investigated were those about the harassment and racial discrimination against him. He pointed out that it was not "what [he] wanted, but it is what it is".

[145] The day after that meeting, Mr. Singh emailed both Mr. Robert and Mr. Patrice (Exhibit G-1, tab 2). Mr. Singh testified that he wanted to signal that he was open to other means of resolution. He stated that with his experience, he wanted to resolve things amicably with Ms. Proulx. For instance, a mediator could have been involved. Neither Mr. Robert nor Mr. Patrice responded.

[146] The following Tuesday, December 1, 2015, Mr. Singh attended the Standing Committee's Subcommittee on the Senate Estimates meeting despite the fact that his two capsules had been withdrawn. His colleague directors made their requests for additional funding. When his turn came, he was sitting next to Mr. Patrice. He told the subcommittee that the Human Resource Directorate had no requests. A senator asked him about the request for training the senators' staff.

[147] Mr. Singh said that Ms. Proulx and Ms. Legault then interrupted. He said that he was then asked for his thoughts about it. According to him, at that point, Mr. Patrice grabbed his arm and told the senators that Ms. Proulx would answer, which she did. After that, Mr. Singh said that he felt like he was done and that he was ready to hurt himself. He had been humiliated in front of the subcommittee. He had never seen someone not answer one of their questions.

19. The termination of Mr. Singh's employment

[148] On December 3, 2015, Mr. Singh was called to Mr. Patrice's office. Mr. Robert was also present, and he stepped out for a moment. When he returned, he was holding

a letter. Mr. Patrice told Mr. Singh that they had spoken with the senators and that his employment was terminated as of that day. Mr. Patrice gave him the letter of termination dated December 2, 2015. Mr. Singh read it and left without saying anything. He walked down the hall with Mr. Patrice, who told him to gather his personal items and to return his Senate pass and BlackBerry.

[149] Mr. Singh testified that he left the building. He was not well. He went to the House of Commons to see Pierre Parent, who was the head of Human Resources there. Mr. Singh showed him a copy of the letter. Mr. Parent reacted in disbelief.

[150] Mr. Singh drove home around noon that day. He broke down and cried. He called his father. He then went to his room, where he stayed for three to five days. His wife was worried, especially since he is diabetic. He did not want to tell his three boys about it, especially since it was just before Christmas.

[151] Mr. Singh said that it was hard on him. He was then 43 years old and a member of a visible minority group in an EX-02 position that was about to be reclassified EX-03. He testified that in the federal public sector, no one matched his profile. He insisted that he always did everything correctly and that he never received a personal favour from anyone. He indicated that at the time, his ambition was to become a senior assistant deputy minister if not a deputy minister. Mr. Singh maintained that everything was taken from him. And all he had done was follow the employer's relevant policy.

[152] Mr. Singh testified that two weeks after the termination of his employment, Senator Furey was newly appointed as Speaker of the Senate. Since Mr. Singh did not know whether the Standing Committee had been made aware of his situation and the termination of his employment, on December 14, 2015, Mr. Singh sent a letter to Speaker Furey about the situation and sent copies of it to the 15 other members of the Standing Committee (Exhibit G-1, tab 4). No one responded.

20. Grievance and media coverage

[153] On December 17, 2015, Mr. Singh grieved the Senate's decision to terminate his employment.

[154] *The Hill Times* and the *Canadian Press* contacted Mr. Singh about the termination of his employment on the first Monday in January 2016. He said that he

did not know how they had obtained his phone number. He testified that they told him that the Senate had said that he had been terminated for harassment, even for sexual harassment. He denied the allegations and referred them to his counsel (Exhibit G-3, tab 2).

[155] On January 6, 2016, the *Canadian Press* published a story on Mr. Singh (Exhibit G-3, tab 1). He indicated that he did not want to have his name in public, so he wrote to the Senate, asked that it respect his privacy, and raised that many senators did not receive the December 14, 2015, letter. He testified that he had been told that Mr. Patrice had intercepted the copies of that letter before they reached the 15 senators.

[156] On January 11, 2016, *The Hill Times* also published an article on the termination of Mr. Singh's employment. He pointed out that Jacqui Delaney, who was interviewed, worked for Senator Housakos and that he did not know Senator Mobina Jaffer, who was also mentioned in the article (Exhibit G-3, tab 3). The same day, Mr. Singh asked for a public statement from the Senate to the effect that Mr. Singh had been terminated without cause. Mr. Singh indicated that no such statement was issued (Exhibit G-3, tab 4).

[157] *The Hill Times* published another article on January 18, 2016, still on the subject of the termination of Mr. Singh's employment. Among other things, it quoted a statement emailed by Senator Housakos (Exhibit G-3, tab 5).

[158] As to whether at that time Mr. Singh had received pay in lieu of notice of termination, as referred to in the January 21, 2016, letter written by the Senate, Mr. Singh indicated that he received it only on July 21, 2016 (Exhibit G-3, tabs 6 and 7).

21. Mr. Singh's efforts to find employment after the termination

[159] Mr. Singh testified that he did not work for all of 2016, despite his efforts. With his counsel's help, he prepared for this hearing a table of his job searches for 2016 and 2017 (Exhibit G-3, tab 15). In his testimony, Mr. Singh went over the list of applications he made and pointed out that he was even prepared to take a position in Calgary, Alberta, but it did not materialize. He also applied for positions above and below the EX-02 classification level, such as at the AS-07 and PE-03 groups and levels.

[160] In February 2017, Mr. Singh landed a contract with the Altis firm as a consultant. While still looking for employment, he then decided to incorporate and landed several short contracts in March, April, May, June, and July 2017 (Exhibit G-3, tabs 15 and 16).

[161] In September 2017, he was hired as a casual with Service Canada for a period of less than four months at the AS-07 group and level (Exhibit G-3, tab 21).

[162] On February 1, 2018, he was hired on an indeterminate basis with the Canadian Coast Guard at the AS-07 group and level and still occupies that position. His salary is at the maximum of the scale since he was hired from outside the public service. Mr. Singh stated that when he accepted the job, he was desperate. He needed money, especially with four dependents at home. His credit cards were maxed out. He also needed it because of the medical insurance that came with it and his need for insulin. He pointed out that up to February 2018, he did not have medical insurance but nevertheless had medical bills to pay (Exhibit G-3, tab 13).

[163] Mr. Singh testified that after taking the Coast Guard employment, he continued to look for other positions.

[164] Mr. Singh pointed out an application he made with the Canadian Food Inspection Agency. He said that after being asked about his time at the Senate and informing it that he had been fired because he had made a complaint, the agency decided not to offer him the position. He stated that he decided not to apply to public-service positions for the time being. He feels that he is overqualified for most positions and that he would not be appointed. So, he wants his Senate job back. He could then apply to other positions should he wish to leave the Senate.

[165] Mr. Singh concluded his testimony by expressing what he views as the lack of progress the Senate has made in its hiring of visible minorities. He pointed out the employment equity report that was published when he joined the Senate in 2013 and the results when he left in 2015. He stressed that only four or five members of visible minority groups occupied middle-management positions there in 2015-2016 (Exhibit G-1, tab 11, page 4, and tab 12, page 3).

B. For the Senate**1. Ms. Proulx****a. Ms. Proulx's employment background, and Mr. Singh's arrival at the Senate**

[166] Ms. Proulx was the Senate's first witness. She retired on January 30, 2018. She was the clerk of the Senate and of the Parliaments from July 2017 until she retired. Before that, she was the Senate's chief corporate services officer, which meant that she was responsible for the Finance and Procurement Directorate, the Human Resources Directorate, the Communications Directorate, the Information Services Directorate, and the Internal Audit and Strategic Planning Office (Exhibit G-2, tab 13). As of her retirement, she had about 38.5 years of experience, including 9 years in federal-public-service management positions.

[167] In her résumé, Ms. Proulx noted her human-resources experience, notably in staffing, classification, and organizational design.

[168] Ms. Proulx received a master's degree in public administration from the University of Ottawa in 2005, for which her topic was the Senate's classification conversion project. She indicated that her time at the Department of Fisheries and Oceans, where she worked on classification and the potential impact of the Universal Classification System standard, had inspired her to among other things realign Senate administrative positions and replace specific job descriptions with generic ones. She submitted that she worked on hundreds of job classification files throughout her career.

[169] With respect to Mr. Singh's arrival at the Senate in fall 2013 as part of his Interchange Canada assignment, Ms. Proulx indicated that at that time, she was the director of finance and procurement and chief financial officer, and she was involved only in interviewing him.

[170] On his arrival, Mr. Singh and Ms. Proulx were colleagues; they often worked together and got along very well. According to her, initially, she and Mr. Patrice tried to help Mr. Singh. Everything was very positive.

[171] Ms. Proulx indicated that she was not involved in any way in the process of Mr. Singh's appointment to the position of Director of Human Resources in January 2015 (Exhibit G-2, tab 9). She could not remember congratulating him in

writing or asking him inappropriate questions about his appointment but affirmed that she told him, “Good for you.”

[172] In cross-examination, she insisted that she had not been involved in his appointment process, so she could not comment on the reasons that motivated Speaker Nolin to appoint Mr. Singh. She admitted that Speaker Nolin and Mr. Pleau had indicated that Mr. Singh was penalized in terms of his salary due to restrictions in the Interchange Canada assignment (Exhibit G-2, tab 10, page 1).

b. Notices of intent to appoint

[173] Ms. Proulx testified that in consultation with Legal Services, Ms. Vanikiotis recommended issuing a notice of intent to appoint Mr. Singh to the position of Director of Human Resources and that she had agreed with that recommendation (Exhibit G-2, tabs 10 to 12). According to Ms. Proulx, the notice should have been issued before Speaker Nolin signed the letter of offer, but since it had already been signed, she did not think that the letter should be redone.

[174] As for being appointed Chief Corporate Services Officer, Ms. Proulx testified that although it was announced on January 27, 2015, she received her letter of offer only on April 27, 2015, retroactive to February 16, 2015. Therefore, she was in the position on an acting basis but received the delegations needed for it on February 16, 2015. She indicated that her letter of offer stated that she was to be on probation for one year, until February 2016. She explained that when she returned from vacation on January 13, 2015, Mr. Pleau approached her and asked if the position of Chief Corporate Services Officer interested her. She said that she was interested even though she did not know the classification or salary. She said that she was not involved in the discussions that led to an SEG-05 classification, which is equivalent to EX-05 in the public service.

[175] When she was asked about the notice of intent to appoint Mr. Singh to the position of Director of Human Resources, Ms. Proulx stated that she had simply agreed with the proposal of Mr. Patrice and Ms. Vanikiotis but that she had not consulted the staffing policy (Exhibit G-2, tab 10, and Exhibit G-1, tabs 13 and 14). After reviewing the staffing guidelines, she maintained that she still agreed with Ms. Vanikiotis’s and Mr. Patrice’s recommendation that issuing the notice was in fact appropriate (Exhibit G-1, tab 14, pages 14 and 15).

[176] She explained that to her knowledge, a notice of intent to appoint her to the position of Chief Corporate Services Officer was not issued but that she did not know at the time, because the person considered for appointment is not copied on the notice.

[177] In cross-examination, Ms. Proulx agreed that in her case, a notice of intent to appoint should also have been issued, according to the staffing policy, and that therefore, it was up to Mr. Singh to explain why it was not done, particularly given that the topic was relevant at the time because such a notice had just been issued for him.

[178] As for the allegation in the November 24 email that she had received preferential treatment as her appointment had not been subject to a notice of intent to appoint, Ms. Proulx insisted that on one hand, the lack of such a notice in her case was not something positive, and that on the other hand, it had been up to Mr. Singh, as the director of human resources, to issue one. If she received preferential treatment, it was at his hands (Exhibit G-1, tab 1, page 3).

[179] As for the probationary period, Ms. Proulx agreed that in her case, had she not been appointed Chief Corporate Services Officer, she could have returned to her former position, which had not been filled, but that Mr. Singh would have had a priority right only because he had resigned from the public service.

c. Changes to the Senate's administrative structure

[180] Ms. Proulx testified that in January 2015, Speaker of the Senate Senator Nolin announced the new administrative structure, overseen by the Executive Committee composed of the three sector chiefs, Mr. Robert, Mr. Patrice, and her. She agreed that Mr. Singh worked with Mr. Pleau designing that new structure (Exhibit G-2, tab 13).

[181] She noted that at first in the new context, her relationship with Mr. Singh was positive. She stated that he had told her and had written down that he was lucky to have the best of the three members of the Executive Committee as his supervisor (Exhibit E-1, tab 14). He even went so far as telling her to take things in a relaxed way, which she found nice (Exhibit E-1, tab 15).

[182] Ms. Proulx testified that in February 2015, the Executive Committee decided to follow up on a request from senators who had expressed a need for change to the way things were being administered. However, according to her, the Steering Committee's

instructions were not specific. Rather, the Executive Committee was told to put a functional and well-organized structure in place.

[183] Ms. Proulx indicated that she and her two colleagues then agreed to a structure model. She stated that she asked Mr. Singh what needed to be done in terms of classifying positions, to enable the new structure. When she was questioned as to why he had not been involved from the outset, she replied that she and her two colleagues knew the Senate very well, as they had worked there for several years, and that they wanted to be aligned before deciding on the specifics of the new structure.

[184] In cross-examination, she replied that once the Executive Committee was satisfied with the new structure, she asked Mr. Singh for the next steps. The committee then reviewed his proposals. She denied that the affected individuals had been informed before Mr. Singh of the committee's decisions and that he was presented with *fait-accomplis* situations.

[185] As to whether Speaker Nolin asked the three members of the Executive Committee to consult Mr. Singh on the reorganization issues, Ms. Proulx replied that Speaker Nolin had just appointed them to the assistant-deputy-minister level and therefore did not tell them whom to consult. She insisted that the Executive Committee first required an idea of the desired structure before consulting Mr. Singh.

d. Issues at the Senate in 2015

[186] In her testimony, Ms. Proulx returned to some issues that the Senate dealt with in 2015. For example, she emphasized that Mr. O'Brien had not been present as of January, that the new structure was put in place with the Executive Committee, and that the high-profile Duffy trial had begun in about March 2015. On that point, she noted that she had been identified as a witness at that trial because of her past duties as the director of finance and procurement, which had required significant preparation from her. In fact, she was called initially as a witness in April 2015 for six consecutive days. During that period, Speaker Nolin passed away. She was also recalled to the Duffy trial later, in November 2015.

[187] Ms. Proulx testified that in June 2015, the Senate received the findings of the Auditor General's report on its expenses. That report imposed a workload on some

Senate committees, for which she was responsible as the person in charge of internal governance for them.

[188] Federal elections were held in October 2015. In May 2015, Senator Housakos became Speaker of the Senate and Chair of the Standing Committee. On November 3, 2015, Ms. Proulx's father passed away. She returned to work on November 16, 2015. She had to testify again at the Duffy trial on November 20, 2015. A new Speech from the Throne was delivered on December 3, 2015, after which Senator Furey became the new Senate Speaker.

e. Attending Standing Committee and Steering Committee meetings

[189] Ms. Proulx explained that when the new governance structure was put in place, the senators spoke with the Executive Committee about the presence of roughly 10 directors at Standing Committee and Steering Committee meetings.

[190] At Standing Committee meetings, all the directors attended and sat along a wall. At Steering Committee meetings, Mr. Robert, Mr. Patrice, Mr. Singh, Gérald Lafrenière director of internal audit and strategic planning, and Ms. Proulx attended, while the other directors waited in the antechamber to be called, which did not happen often.

[191] Ms. Marga was the Finance and Procurement Directorate's director on an acting basis, and according to Ms. Proulx, she never attended a Standing Committee or Steering Committee meeting. Ms. Proulx stated that the senators found that the three members of the Executive Committee were experienced and that therefore, there was no need for the directors to come to the meetings. She stated that the senators were also concerned about potential leaks of discussions at committee meetings after the Auditor General's report was leaked.

[192] According to Ms. Proulx, the new rules were that as of February 2015, only the member senators and the three members of the Executive Committee would attend Standing Committee and Steering Committee meetings, except for those specifically invited. For Standing Committee meetings, the chair had to agree to any invitations. According to her, if a member of the Executive Committee did not know an answer at a meeting, he or she could be accompanied the following week by a director or manager (Exhibit G-2, tab 14).

[193] Ms. Proulx explained that all the directors were affected and disappointed by the new directive. Being present at the meetings was also often a way to socialize.

[194] Ms. Proulx acknowledged that as had the three members of the Executive Committee, Mr. Singh had previously attended all the Steering Committee meetings, which made the decision harder for him. According to her, he often brought it up. She testified that she often explained to him the reasons for the senators' decision. She admitted that she did not circulate a copy of it because it was sensitive. However, she maintained that she explained it. She stated that despite the decision to admit directors only by invitation, she met regularly with her team members, to keep them informed of discussions that took place at Standing Committee or Steering Committee meetings.

[195] Ms. Proulx recalled that she attended all Standing Committee and Steering Committee meetings as part of her duties. She insisted that Mr. Singh was the director from her sector who, following the February 4, 2015, directive, was invited most often to those meetings. However, she noted that other directors in her sector, namely, Ms. Marga and the director of communications, never went to the meetings. As for Director of Information Services Ms. Bouchard, given the technical nature of the subject, Ms. Proulx preferred to have her present when necessary.

[196] Ms. Proulx indicated that she presented human-resources briefing notes to the Standing Committee and Steering Committee, which was done using templates that the senators had approved in advance. As applicable, a secretariat within Ms. Proulx's team requested a briefing note from the director of the sector in question. Ms. Proulx indicated that although the briefing notes were not signed, she assumed that the directors in question had reviewed them. Thus, briefing notes were prepared in advance, and their contents were discussed internally before they were sent to, for example, the Steering Committee.

[197] Ms. Proulx stated that she never invited an employee of the Human Resources Directorate to attend any of the meetings without Mr. Singh being informed in advance. She also maintained that she never asked any of his employees to prepare a briefing note without his knowledge.

[198] In cross-examination, Ms. Proulx stated that not only did the senators fear that their discussions would be leaked if too many directors were present but also, they

wondered if the directors had better things to do. According to her, this issue was an irritant for the senators. She indicated that the senators had communicated the directive to the Executive Committee behind closed doors and that it was included in minutes that could not be disclosed.

[199] She also explained that with respect to Steering Committee meetings, two or three directors often waited in the antechamber and were often noisy, which was an irritant.

[200] According to Ms. Proulx, the senators had advised the Executive Committee that were one of the three members of the Executive Committee absent from the Standing Committee or the Steering Committee, he or she could not be replaced. Consequently, as the clerk of both committees, she was not replaced when she was absent.

[201] According to her, the Executive Committee simply wanted to carry out a decision made by the Standing Committee and Steering Committee about directors participating in Senate committees, even though all the directors were disappointed. She maintained that she explained to Mr. Singh the reasons that the senators supplied but that he remained unhappy. She agreed that Gerald Lafrenière, Director of Internal Audit and Strategic Planning at the Senate, had attended a Steering Committee meeting once to explain a project between February 4 and autumn 2015, but according to her, it was at the committee's express request.

[202] She maintained that during that period, Mr. Singh was the director most often invited to attend Senate meetings, and she denied that Ms. Bouchard had regularly attended them. She further stated that the Standing Committee and the Steering Committee did not sit during summer and fall 2015 due to the federal elections. She testified that she answered the senators' questions, among others those about human resources, including different reports, such as one on employment equity.

[203] When she was asked whether Luc Pressault, who became the director of human resources after Mr. Singh left, attended Standing Committee and Steering Committee meetings, Ms. Proulx agreed that he did and stated that in fact, new directors had been invited to attend committee meetings, for training purposes. She explained that in 2016 and at the request of the Chair of the Standing Committee, Mr. Pressault attended a meeting to explain the content of a report about diversity to the related subcommittee.

[204] As to whether Mr. Pressault attended all the Senate's meetings during his time as the director of human resources, Ms. Proulx stated that in 2017, she became Clerk of Parliament, that the Human Resources Directorate then reported to the law clerk and parliamentary counsel's sector, and that after Mr. Patrice's departure, his replacement was not comfortable with human-resources questions, which explains Mr. Pressault's presence at the committee meetings.

[205] As for the minutes of Standing Committee and Steering Committee meetings being available, Ms. Proulx maintained that for example in 2017, they were still not circulated, except on a need-to-know basis. She testified that she always provided feedback to the directors involved about briefing notes or committee meetings at her management meetings or at bilateral meetings with each of her directors. She maintained that although some discussions from committee meetings could not be shared, she always informed the relevant director of the gist of them and of the decision rendered.

[206] According to her, the Executive Committee reviewed briefing notes before they were sent to the Senate's committees. If a note had to be changed, the director in question was informed. She also stated that she prepared summary tables setting out the outlines of the discussions with the senators and that she shared them with her directors through her secretariat, which also followed up on topics that the committees discussed.

f. Mr. Singh's letter of offer

[207] Ms. Proulx testified that once an employee filed a grievance after the notice of intent to appoint Mr. Singh was issued, she had to review the file, with Mr. Bédard's help, to respond to the grievance. She indicated that things she saw in the letter of offer that Mr. Singh prepared surprised her (Exhibit G-2, tab 9). In cross-examination, she emphasized that the leave-transfer issue had "[translation] jumped out at" her.

[208] Ms. Proulx indicated that on April 2, 2015, she then contacted Mr. Bédard and Mr. Pleau to find out what had been discussed with Mr. Singh before he prepared the letter (Exhibit G-2, tab 17). She testified that at that time, Mr. Pleau told her that he had asked Mr. Singh why he was on an Interchange Canada assignment and why Mr. O'Brien had not appointed him as the director permanently. Mr. Pleau reportedly also

mentioned that he told Mr. Singh to “[translation] take care of it”, referring to the letter of offer.

[209] Ms. Proulx explained that still on April 2, 2015, she met with Mr. Singh, along with Mr. Bédard, to gather the facts and make a decision about the grievance. According to her, Mr. Singh was not pleased at the meeting, and he explained the circumstances that had led him to prepare his letter of offer.

[210] According to Ms. Proulx, Mr. Singh awarded himself a raise of more than 5%, while according to the Treasury Board Secretariat’s rules, which the Senate follows, it is to be 5% without specific authorization otherwise. She submitted that the only other time this occurred (an increase of more than 5% was granted), an exception request had been submitted to the Standing Committee, which was not done this time.

[211] In cross-examination, Ms. Proulx acknowledged that Mr. Pleau and Speaker Nolin, who had about 25 years of Senate experience, signed the letter of offer. However, she emphasized that the exception to the raise had not been explained to Speaker Nolin and Mr. Pleau and that they had relied on what Mr. Singh had told them. According to Ms. Proulx, Mr. Singh should have consulted Ms. Vanikiotis before preparing the letter.

[212] Ms. Proulx testified that she was not convinced that in reality Mr. Pleau and Mr. Singh had discussed the probationary period issue, she acknowledged that in her opinion, this issue was the least serious of the three allegations. According to Ms. Proulx, the leave-transfer issue was undoubtedly the most important thing.

[213] Ms. Proulx stated that the April 2, 2015, meeting was tense, that Mr. Singh argued that he should not have been put in that situation, and that Mr. Patrice had not been required to issue a notice of intent to appoint.

g. Mr. Singh’s disciplinary hearing and the letter of reprimand

[214] Ms. Proulx testified that on May 5, 2015, she invited Mr. Singh to a disciplinary hearing to obtain answers and his version of the facts with respect to some things in his letter of offer that were not compliant with the Senate’s policies. She indicated that on May 5, she called him to read him the letter inviting him to a disciplinary hearing and that she then gave it to him personally. According to her, he reportedly told her that it was all “bullshit” and that she was just repeating what Mr. Patrice told her to

say. According to her, he allegedly added that he would no longer speak to Mr. Patrice, for whom he had “total disrespect”. She said that during the call, she took notes on the back of the May 5 letter (Exhibit E-1, tab 11). According to her, the disciplinary meeting took place on May 15, 2015; Mr. Patrice, Mr. Robert, and Mr. Bédard were also present. Mr. Singh was accompanied by Mr. Desharnais.

[215] Ms. Proulx explained that at that disciplinary meeting, discussed were Mr. Singh’s salary, his waiving of the probationary period, and the leave transfer. According to her, he should not have awarded himself a higher salary than allowed or waived a probationary period. She insisted that the leave transfer was the most worrisome thing. She maintained that at the Senate, employees have an annual limit on leave accumulation that must be respected; otherwise, without special authorization, the leave is paid out. According to her, Mr. Singh showed no remorse at that meeting and maintained that he would “not answer that”. It ended tensely, with his message being that the Senate was not a modern employer.

[216] Ms. Proulx testified that on June 1, 2015, the Executive Committee and Mr. Singh met to discuss the same matter. Mr. Singh then apparently admitted that he did not know of the leave-transfer policy and expressed remorse, even stating that he would have been more severe with discipline than the letter of reprimand that the committee was about to issue to him.

[217] According to Ms. Proulx, on June 12, 2015, the Executive Committee effectively decided to issue a letter of reprimand to Mr. Singh, who should have informed Mr. Pleau in January 2015 of the Senate’s policies and their exceptions, which he did not do (Exhibit G-2, tab 22). She noted the requirements of the “Statement of Values and Ethics of the Senate Administration” (Exhibit E-1, tab 6). She also referred to the conflict of interest code for persons employed by the Senate and its policy statement, which notably prohibits any favourable treatment. According to her, the fact that Mr. Singh wrote his letter of offer, including favourable terms and conditions of employment, contravened that code’s requirements. Although Mr. Pleau asked him to prepare the letter of offer, Mr. Singh should have asked someone else to do it instead (Exhibit E-1, tabs 7 and 8).

[218] In cross-examination, Ms. Proulx acknowledged that this matter had shaken her, as the director of human resources had to be her pillar in difficult matters. She also

acknowledged that the Executive Committee had considered other discipline, including termination, but that ultimately, it agreed to issue a letter of reprimand.

[219] Ms. Proulx testified that the Human Resources Directorate was not informed of the matter because Mr. Singh was the director. The senators were also not informed because, according to her, it would then have been more difficult for Mr. Singh to work with them. Therefore, the idea was to not escalate the matter, as Mr. Singh had expressed remorse.

[220] Ms. Proulx maintained that the idea at the time was to continue working together, and as the Executive Committee wanted to keep the matter confidential. Therefore, it was decided to keep the letter of reprimand in Ms. Proulx's office instead of putting it on Mr. Singh's personnel file.

h. Leadership development program for procedural and legislative clerks

[221] Ms. Proulx stated that the leadership development program for procedural and legislative clerks was the responsibility of Clerk of the Senate Mr. Robert and that she had not taken part in its development and was not aware of it until she received an email about it from Mr. Singh on June 13, 2015 (Exhibit G-2, tab 23). She indicated that clearly, Mr. Singh was annoyed at not having been involved, but she did not understand why she was confronted, as she was not aware of the program. She testified that in her opinion, it meant that there was dissatisfaction between Mr. Singh and Ms. Vanikiotis, who had told him about the program on the previous day, and that it was up to him to resolve his differences in his directorate.

i. Ms. Vanikiotis's Interchange Canada assignment and sick-leave request

[222] Ms. Proulx stated that on Friday, May 1, 2015, she was informed that Ms. Vanikiotis was considering a secondment outside the Human Resources Directorate. Ms. Proulx indicated that she asked Mr. Singh about who could replace her. According to Ms. Proulx, he then suggested someone who had failed to qualify two months earlier for a SEN-10 position, which was two levels lower than the manager position that Ms. Vanikiotis occupied, classified at the MMG-02 level. Ms. Proulx testified that she then told Mr. Singh that she would speak to Ms. Vanikiotis, who had not yet made a decision and wanted time to reflect.

[223] In cross-examination, Ms. Proulx stated that she never told Mr. Singh that she did not agree with the secondment, even though she had reservations. On May 3, 2015, she reiterated to him that no decision had been made. Under the circumstances, she said that she did not understand his response that day (Exhibit G-2, tab 20). She forwarded his email to Mr. Robert and Mr. Patrice, who replied that they wanted to be involved (Exhibit E-1, tab 24). According to her, Mr. Patrice and Mr. Robert then met with Ms. Vanikiotis, who in the end decided to remain with the Senate.

[224] In her testimony, Ms. Proulx indicated that in February 2015, she asked Mr. Singh to be specific about the types of leave requested; for example, whether the leave was for medical or family reasons. She said that she told all her directors that they had to comply when reporting leave, in case of an audit.

[225] Ms. Vanikiotis was ill on February 17, 2015, and worked all the same. However, she did not request sick leave for all the hours that day because she worked for three of them. Ms. Proulx insisted that she did not understand why Mr. Singh told her in his email that she was “100% wrong” and reminded her not to talk to his employees because, on one hand, he had raised the matter with her, not the other way around, and on the other hand, according to Ms. Proulx, she never discussed the matter with Ms. Vanikiotis (Exhibit E-1, tab 16).

[226] As to whether Ms. Proulx asked Mr. Singh not to talk to Mr. Patrice, in cross-examination, she replied that she simply asked Mr. Singh to keep her informed of any sensitive issues involving senators. She maintained that she never asked Mr. Patrice not to speak to Mr. Singh and that Mr. Patrice always wanted her involved (Exhibit G-2, tab 15, and Exhibit E-1, tab 19).

j. The chief financial officer development program

[227] Ms. Proulx testified that Ms. Marga had replaced her on an acting basis in her former position as the director of finance and procurement and chief financial officer. Ms. Marga had informed her that she was not interested in the position were it permanent. Ms. Proulx said that she approached Mr. Singh, who suggested establishing a 30- to 42-month phased development plan to allow a candidate to become that next director, classified SEG-03 (Exhibit G-2, tab 18).

[228] Ms. Proulx explained that several people applied. In an email dated April 8, 2015, Mr. Singh suggested to her that a take-home examination be required. She indicated that she did not want one and informed him that she preferred that two of his staffing officers finalize the details of the interview questions. She indicated that she felt that he had brought the project to where he was supposed to and that he needed to move on to something else, especially since other files took up a significant amount of their time during that period, such as the senators' employee compensation study.

[229] When she was asked why someone at her level would take the time to determine whether there should be a take-home examination, when she could have left it to Mr. Singh's discretion, Ms. Proulx explained that it was an important file for her, that as a client she felt that it was important to give her point of view, and that regardless, it did not take much time to state that she did not like take-home-type questions.

[230] She also had to explain why she asked Ms. Hubert and Ms. Labelle to handle the next steps. According to her, she asked that only staffing specialists be involved in the technical aspect, as the strategy had been developed. She stated that on April 22, 2015, she left to prepare for the Duffy trial and that after that, she was no longer involved.

[231] According to her, Mr. Singh never indicated to her that he was interested in being a member of the selection board. However, she acknowledged that he would have been a good choice, given that three candidates were members of a visible minority group. She also stated that given the issues, she wanted a public-service chief financial officer on the board as well as Ms. Marga, who held the position of Director of Finance and Procurement and Chief Financial Officer on an acting basis.

[232] Ms. Proulx testified that normally, she would have been a member of the selection board, but that in April 2015, she was very busy preparing for the Duffy trial. So, she asked Ms. Bouchard to replace her. According to Ms. Proulx, Ms. Bouchard had no financial experience as such but had about 30 years of work experience, and as the director of information services, she had to manage very large budgets and was familiar with financial principles. Ms. Marga and another person with financial experience from outside the Senate completed the selection board. The board was made up of two women and one man, and one of them had a physical disability.

According to Ms. Proulx, Mr. Singh never raised any concerns with the selection board's composition.

[233] Ms. Proulx testified that the interviews were held while she testified in the Duffy trial; that therefore, she had no contact with the board members; and that the board retained no candidates. She testified that she was disappointed when she returned after six days of testifying once she was informed that the selection board had not retained any candidates. According to her, the board was unanimous that no candidates had the essential skills to take part in the chief financial officer development program, and it would have been necessary to defy its unanimous recommendation to select someone, which was not done.

[234] In cross-examination, Ms. Proulx acknowledged that she has no accreditation in accounting. However, she noted that she has obtained a master's degree in public administration and that she was the Chief Financial Officer and Director of Finance and Procurement at the Senate before being appointed Chief Corporate Services Officer.

[235] She also acknowledged that she had supervised only one employee at the executive level, a comptroller, before being appointed Chief Corporate Services Officer. As for how managing executives compares to that of employees not in executive positions, Ms. Proulx indicated that directors have their responsibilities and that more detailed discussions about issues can be held with them. According to her, general guidance can still be given to directors, and she emphasized that even she, at her level, also received specific directions.

k. Proposed changes to the Human Resources Directorate

[236] Ms. Proulx testified that after the shooting on Parliament Hill in fall 2014, efforts were made to increase Parliamentary protection. Thus, an organizational structure was desired to support those efforts. The Senate wanted to collaborate. So, Mr. Nunan, Senior Labour Relations Advisor at that time, was assigned to the project, initially until March 2016, so he had to be replaced. In that context, in summer 2015, Mr. Singh presented her with a Human Resources Directorate reorganization proposal (Exhibit G-2, tabs 24 to 28).

[237] Ms. Proulx testified that Mr. Singh proposed many changes during a period she described as turbulent in the Senate because of the Auditor General's report on Senate expenses and the fact that the Human Resources Directorate was to be the next subject of a functional review. She indicated that given the context, the Human Resources Directorate reorganization proposals represented many adjustments to respond to the void created by Mr. Nunan's departure on secondment. According to her, it all created much concern, from an operational standpoint. The timing was not right for the changes. She initially replied to his proposals on June 21, 2015, at 09:03, and again a few minutes later, at 09:22 (Exhibit G-2, tabs 24 and 25).

[238] Ms. Proulx testified that Mr. Singh then replied to her that she was micromanaging him and that he had the authority to make the proposed changes as they were staffing assignments of less than six months, so he did not need her approval. She challenged those assertions, using Mr. Nunan's secondment as an example, which could last nine months, from June 2015 to the end of March 2016.

[239] She also testified that she felt trapped, explaining that Mr. Singh informed her of his intentions but that he did not want her to comment. She denied simply wanting to "push back" and insisted on asking questions and receiving answers. Ms. Proulx stated that she forwarded Mr. Singh's June 19, 2015, email to Mr. Patrice and Mr. Robert (Exhibit E-1, tab 25).

[240] Ms. Proulx maintained that despite the delegations of authority, she remained ultimately responsible and continued to be accountable as the chief corporate services officer. She stated that she forwarded Mr. Singh's emails of June 19 and 21, 2015, to Mr. Patrice and Mr. Robert, also on June 21, 2015 (Exhibit E-1, tab 25).

[241] Ms. Proulx testified that after Mr. Singh's June 19 and 21, 2015, emails, she realized that her relationship with him had become difficult. She explained that the email had followed the letter of reprimand issued to him on June 12 and that she believed that they had turned the page. But given the tone of his email, in which he accused her of micromanaging him, she saw as follows that the situation was becoming increasingly difficult and conflictual (Exhibit G-2, tab 25). In his June 23, 2015, email, Mr. Singh wrote this to her:

Nicole,

You are of course, free to do as you wish and given how rarely HR is invited to speak to the Executive Committee, it will be a novelty.

For clarity purpose [sic], however and for the record, you are wrong on the next level

[242] Ms. Proulx stated that she found that email insulting, sarcastic, inappropriate, and unprofessional. She indicated that she forwarded it to Mr. Patrice and Mr. Robert since the three of them managed the Senate administration, and they were all involved.

[243] When she was asked about the meaning of “Grrr” in her June 21, 2015, email to Mr. Patrice and Mr. Robert, Ms. Proulx denied that it was an expression of irritation at Mr. Singh and stated that instead, it was in response to the inconsistencies of some proposals, such as Mr. Singh’s referral to Mr. Nunan’s secondment sometimes as six months and other times as nine months. She noted that she had to be consulted on that type of secondment (Exhibits G-1, tab 17, and G-2, tab 24).

I. Executive Committee meeting in June 2015

[244] Ms. Proulx stated that Mr. Singh attended the Executive Committee meeting after her June 22, 2015, invitation and that he made notes in preparation for it (Exhibit G-2, tab 25). Mr. Robert and Mr. Patrice were also present. It was held in Mr. Robert’s office, and Ms. Proulx indicated that she took notes (Exhibit G-2, tab 29). According to her, the meeting was not cordial, and Mr. Singh was not happy; he was tense and became agitated.

[245] Ms. Proulx said that Mr. Singh again asked why he was no longer invited to Standing Committee and Steering Committee meetings and that the reasons were reiterated in the presence of her two colleagues. According to her, he said that the Human Resources Directorate and the Finance and Procurement Directorate were no longer represented at those meetings, even though she still attended them. She maintained that he stated that she was not an expert and that she was not qualified to make human-resources decisions. According to her, his comment applied in general, not just in the context of meetings with senators. She added that he had insisted that he speak on the Human Resources Directorate’s behalf. According to her, Mr. Patrice intervened and told Mr. Singh that she had human-resources experience at the Senate.

[246] In cross-examination, Ms. Proulx agreed that at the meeting, Mr. Singh asked who should deal with a harassment complaint were one made against one of the three

Executive Committee members, but she said that she did not remember Mr. Patrice saying that one of the other two chiefs would handle it. According to her, under the circumstances, such a complaint would have to go to the Speaker of the Senate and to the Steering Committee (Exhibit G-1, tab 16). She also acknowledged that at that time, Mr. Singh said that he was being treated differently than were the other directors but did not say that it was because of his racial background.

[247] According to Ms. Proulx, during that meeting, the Executive Committee sought to determine whether Mr. Singh had a grievance or a harassment complaint. She agreed that the committee took no action after that meeting and emphasized that normally, it would have consulted with the Human Resources Directorate but that this time, doing so was not possible because Mr. Singh was the director of human resources.

m. The Senate's compensation study

[248] At that same June 2015 Executive Committee meeting, Mr. Singh reportedly returned to the Senate's employee compensation study that had previously been raised with him in May 2015, at which time he apologized for the tone he used toward Ms. Proulx (Exhibit E-1, tab 17).

[249] Ms. Proulx explained that the decision to review the compensation of senators' employees had been made when Mr. O'Brien left and that it was due to be completed in April 2015. She testified that she had been very involved in a similar conversion and classification project when she was with the Finance and Procurement Directorate in 2004, and she had seen how difficult it could be. She also mentioned an exercise that had taken place years before and that had involved severance allowances, which she had not taken part in; it had proved disastrous.

[250] According to Ms. Proulx, given that the compensation of senators' employees was involved, care was required when managing such a project, and no mistakes could be made, as senators react very quickly when it comes to their employees. According to her, it was a very important file, to the point that she would have worked on it at night if required. She indicated that she then asked for someone from the Finance and Procurement Directorate to work with someone from the Human Resources Directorate, to ensure that everything was compliant.

[251] Ms. Proulx testified that she personally reviewed letters to employees as part of the exercise but that unlike what she had done in 2004, she did not review all of them; she simply reviewed the form letters. She also maintained that she did not redo the calculation for each letter.

[252] When she was asked whether in May 2015 and before he was disciplined, Mr. Singh had noted that she was micromanaging him, Ms. Proulx stated that she did not remember it being a major issue (Exhibit G-2, tab 21). She agreed that the senators' employee compensation project had already been underway for a year-and-a-half when she became the chief corporate services officer and that everything was going well. However, she noted that given her experience in 2004, she knew the risks of such an exercise and wanted to ensure that everything ended without any problems. She also acknowledged making suggestions for the letters after consulting with senators' employees. She stated that she saw her role as that of a collaborator, and the fact that she was classified SEG-05 should not have prevented her from ensuring that everything was compliant.

[253] Still at the June 2015 Executive Committee meeting, Ms. Proulx reiterated the fact that she had never expected Mr. Singh to be a "yes man" and that instead, she found that he would have liked her to be a "yes woman". She challenged the allegation that she micromanaged and insisted that she felt responsible and that she had to ensure sound management in her sector.

[254] She also testified that sometimes, she might have spoken with and asked questions of employees from any of her directorates if, for example, she encountered them in a hallway. However, she denied going directly to Mr. Singh's employees about a matter with which he should have been involved. She indicated that she had management meetings and bilateral meetings with each of her directors. As to whether she treated Mr. Singh differently from her other directors, she stated that it never happened.

n. Mr. Singh's 2014-2015 performance appraisal and conference attendance

[255] Ms. Proulx testified that nevertheless, along with Mr. Patrice and Mr. Robert, she decided to award the maximum 10% in incentive pay to Mr. Singh for the entire 2014-2015 fiscal year, even though technically, under the interchange agreement, it should have been prorated, and Mr. Singh should have received 8% for most of the

year, from April 2014 to January 2015 (Exhibit G-2, tab 27). She acknowledged that she also received the full 10% for April 2014 to January 2015 and that the Steering Committee made those decisions (Exhibit G-8).

[256] According to Ms. Proulx, the performance appraisal exercise also included confirming conference attendance. For the Association of Professional Executives of the Public Service of Canada conference, before he left, Mr. O'Brien approved Mr. Singh's request. Ms. Proulx also stated that Mr. O'Brien established a directive that only two people could attend a conference if travel expenses were involved. She testified that the Executive Committee changed that directive to allow her, Mr. Singh, and Ms. Bouchard to attend the Canadian Association of Parliamentary Administration conference that was to be held outside the National Capital Region.

[257] While Ms. Proulx maintained that Mr. Singh was officially informed at the same time as Ms. Bouchard that he was also to attend the Canadian Association of Parliamentary Administration conference, Ms. Proulx also explained that since Ms. Bouchard was to make a presentation at that conference, she might have been told that she was to attend the conference before receiving the official confirmation, since she had to prepare for it. In cross-examination, Ms. Proulx stated that she could not provide the exact date on which Ms. Bouchard and Mr. Singh were informed that they would attend. It should be noted that the document entitled, "Appendix C - Travel for training guidelines (course and conferences)" (Exhibit G-9) was filed after Mr. Singh and Ms. Proulx testified.

o. Proposed changes to the Human Resources Directorate (continued)

[258] Ms. Proulx testified that after her discussions with Mr. Singh in summer 2015, the Human Resources Directorate reorganization issue was raised anew on September 10, 2015, in his office (Exhibit G-2, tab 30). She testified that she told him that she still did not agree with his proposals and that her questions were still unanswered. According to her, he was not pleased. He maintained that he had the required delegation and that regardless, he reported to the Executive Committee. She then told him that he reported to her.

[259] According to her, he became agitated during the meeting and indicated that he would not proceed with the changes, and when she left the office, he apparently told her that he "did not mean disrespect". Ms. Proulx testified that Mr. Singh often used

that expression as a “caveat” after saying what he meant to say (Exhibit G-2, tab 30). She testified that she decided to put her concerns in writing, since he had reacted negatively when they had their discussion and was agitated, and she sent them to him on September 16, 2015 (Exhibit G-2, tab 31). Ms. Proulx indicated that on that day, they reviewed the letter together.

[260] In her testimony, Ms. Proulx reviewed the contents of that letter and pointed out that it also referred to the fact that they had had “difficult exchanges”. In particular, she stated that since the Senate reorganization, the delegation of powers from the Standing Committee, which Clerk O’Brien had exercised, now fell to the Executive Committee. Thus, even though, for example, the Senate’s delegation-of-authority policy had not yet been changed to reflect the fact that Mr. O’Brien’s position had been split into three in 2015, it had to be understood that the term “Clerk” in that policy referred to the three members of the Executive Committee (Exhibit G-1, tab 17).

[261] She also stated that Mr. Singh insisted that he had the required delegations of authority to make the changes, even though for Mr. Nunan, the secondment could have been for up to nine months, which was beyond Mr. Singh’s authority.

[262] Ms. Proulx testified that on one hand, she was tempted to agree with Mr. Singh’s Human Resources Directorate reorganization requests, but that on the other hand, since she was ultimately responsible as the chief corporate services officer, she could not bring herself to. According to her, several proposals required clarification, which is why she had chosen to add an “Appendix A” to her letter of September 16, 2015, to clearly identify the issues and their responses.

[263] In cross-examination, she acknowledged that once a delegation of authority is granted, it is rare for the delegator to withdraw it. However, she stated that it is not rare for the delegator to continue being involved. She also argued that she wanted answers to her questions.

[264] When she was asked why she felt that Ms. Blais was a better choice than Ms. Eynoux to replace Mr. Nunan during his secondment, Ms. Proulx explained that Ms. Eynoux had just joined the Senate, while Ms. Blais had significant labour-relations experience, and the Senate was in a collective bargaining period. Ms. Blais also used to be the natural replacement for Mr. Nunan when he was absent. Moreover, according to

Ms. Proulx, Ms. Eynoux had just been assigned to Services to Senators and it would not have been desirable to again make changes that would have affected that area.

[265] When she was asked whether she was more comfortable with Ms. Blais than Ms. Eynoux, who was classified at a higher level than Ms. Blais, Ms. Proulx agreed that Ms. Eynoux was classified higher but that Ms. Blais had already qualified at the MMG-02 level, the level of Mr. Nunan's position, and had spent more years in the Senate than Ms. Eynoux, who had just arrived. Ms. Proulx wanted continuity.

[266] She also admitted that she did not consult the résumés of those two persons, and she agreed that she had spoken to Ms. Blais about replacing Mr. Nunan while he was on a secondment, but she denied informing her that she would replace Mr. Nunan on an acting basis.

[267] Ms. Proulx reiterated that she felt that the time might not be right for making such changes to the Human Resources Directorate given that the directorate was to undergo a functional review and that therefore, it was best to wait for the results of that exercise.

[268] Ms. Proulx testified that Mr. Singh replied to the September 16, 2015, letter by submitting new proposals on the Human Resources Directorate reorganization in an email dated September 28, 2015. In it, he noted that she had not approved his "attempt to reorganize the HR Directorate to effectively meet its requirements" (Exhibit G-2, tab 32).

[269] According to Ms. Proulx, a meeting with Mr. Singh was held on October 1, 2015, again on the Human Resources Directorate reorganization issue, after which she emailed him on October 13 (Exhibit G-2, tab 32). She testified that she was still concerned that with Mr. Nunan's secondment, if Ms. Blais decided to leave, the Senate would then have a corporate memory problem as Ms. Blais had always replaced Mr. Nunan in the past. Ms. Proulx stated that she did not know why Mr. Singh did not want to at least consider Ms. Blais. According to Ms. Proulx, he never explained why.

[270] When she was asked whether Ms. Blais was a friend, Ms. Proulx replied that she was a former colleague, that they had had the opportunity to work together on sensitive files, and that Ms. Blais had done a good job, but that was it. In the past, at Mr. O'Brien's request, Ms. Proulx had also been required to work with her on a

mediation file. Ms. Proulx testified that Ms. Blais is not a friend; they have never had social contact.

[271] Ms. Proulx testified that in November 2015, Mr. Singh decided to appoint Ms. Blais on an acting basis to replace Mr. Nunan (Exhibit G-2, tab 33).

[272] When she was asked about the Human Resources Directorate functional review, Ms. Proulx replied that it was conducted at the request of the Standing Committee's Subcommittee on the Senate Estimates and that therefore, it had not been her decision. The senators, several of whom were from the private sector, had wondered why there were so many Human Resources Directorate employees. She indicated that the Finance and Procurement Directorate had undergone a functional review while she was the director of finance and procurement and chief financial officer.

[273] According to Ms. Proulx, the subcommittee decided to request the Human Resources Directorate functional review in spring 2015; it took place that fall. She said that she informed Mr. Singh in June 2015. She testified that later, he began questioning the reason for such a review.

p. Ms. Legault's hiring as the director of finance and procurement and chief financial officer

[274] Ms. Proulx testified that when she was appointed Chief Corporate Services Officer, she worked with Ms. Vanikiotis to find a new person for the position of Director of Finance and Procurement and Chief Financial Officer. Ms. Proulx spoke to the Comptroller General of the House of Commons, who identified Ms. Legault as a potential candidate. Ms. Legault had some questions, which she discussed with Ms. Vanikiotis.

[275] Ms. Proulx said that she then met with Ms. Legault. She had never met her before. According to Ms. Proulx, the Steering Committee chose Ms. Legault after an independent firm handled the process.

[276] After the Steering Committee's decision was made, Ms. Proulx testified that she spoke with Ms. Legault on October 7, 2015, about the issues with her hiring. Ms. Legault's vacation leave was an issue because she was entitled to six weeks per year with her employer, while the Senate's limit was five weeks. As well, it was a lateral

transfer for her, which meant that the salary remained the same as that offered by her employer.

[277] According to Ms. Proulx, Mr. Singh apparently suggested to her offering Ms. Legault one week of management leave per year to make up the difference between the five and six weeks. Ms. Proulx testified that she did not agree to make such a promise, particularly because if she were to leave her position of Chief Corporate Services Officer, the agreement would become difficult to maintain. She indicated that she preferred a “clean” approach, and finally, she persuaded Ms. Legault to accept the five weeks of leave with no promises (Exhibit E-7).

q. The Senate’s main estimates

[278] Ms. Proulx explained that the Standing Committee had delegated to its Subcommittee on the Senate Estimates the task of reviewing requests for Senate administration resources. According to her, this subcommittee is official and formal and has a designated clerk, and requests must be submitted in both official languages and on a specific timetable. The subcommittee is led by a chairperson who decides who can intervene during a subcommittee session, and when.

[279] Requests for resources are prepared in each directorate, and the Executive Committee must decide what will be submitted to the subcommittee. A capsule is used for each request. Each member of the Executive Committee must be present when requests from their sectors are submitted.

[280] Ms. Proulx indicated that she attended all the subcommittee’s meetings as finances were under her sector. As the new person in the position of Director of Finance and Procurement and Chief Financial Officer, Ms. Legault also attended, even though she joined the Senate in November 2015 when the process was already well underway.

[281] Ms. Proulx explained that before the capsules were sent to the subcommittee, the Finance and Procurement Directorate compiled them, beginning in August. She testified that in August 2015, in the Centre Block lobby, she told Mr. Singh that she did not approve the request for additional resources for a “shadow position” for the Information Services Directorate because although she agreed with the need, she believed that the expense could be absorbed internally. As for the request for training,

a budget was already in place, and the money could have been taken from another budget.

[282] Ms. Proulx testified that she reminded Mr. Singh of her decision after his October 30, 2015, email, in which he told her that he was working on the two capsules (Exhibit E-1, tab 21). She said that she also told him that regardless, given the upcoming Human Resources Directorate functional review, it would be better to wait for its results before requesting additional resources. Therefore, she maintained that she never told him that those requests were approved.

[283] Ms. Proulx indicated that she saw the emails from Mr. Singh's assistant dated November 4 and 5, 2015, one day before her return to the office on November 16, as she had been absent from November 3 to 16 due to her father's passing (Exhibit G-2, tab 34). She testified that she had been surprised to see the requests from the Human Resources Directorate.

[284] Ms. Proulx testified that she went to Mr. Singh's office on November 16, 2015, with Ms. Legault. She indicated that there was little time to withdraw the two capsules, as the Standing Committee's Subcommittee on the Senate Estimates was scheduled to meet on December 1, 2015, and she wanted to withdraw them before the subcommittee members had to review them. Thus, she could not wait for another discussion with the Executive Committee. She also expected to be called back at any time to continue her testimony in the Duffy trial.

[285] When she was asked why she did not simply email Mr. Singh instead of going to his office with Ms. Legault, Ms. Proulx replied that she felt that an email was not appropriate and that it was more effective to inform him in person. She said that she did not remember if she had advised him of her visit. She said that she went to the building containing his office that day because she wanted to take the opportunity to meet with two of her new employees, including Ms. Legault. Ms. Proulx's office and Mr. Singh's were in different buildings.

[286] She said that she did not fear any "pushback" from Mr. Singh but rather that she wanted to ensure that things were clear, and she maintained that an email from her could have led to email responses, which she wanted to avoid. As to whether Mr. O'Brien ever asked her to withdraw one of her capsules when she was the chief financial officer, Ms. Proulx replied, "[translation] Oh, yes."

[287] Ms. Proulx denied dancing and holding hands with Ms. Legault when she showed up at Mr. Singh's office. She recalled that on one hand, she had returned from bereavement leave and that on the other hand, she did not know Ms. Legault. She had met her only once before. According to Ms. Proulx, it was not a happy period in her life.

[288] Ms. Proulx testified that she asked Mr. Singh why the two capsules were still there, given that she had already told him that she did not agree with the requests and that regardless, the resources were already there to cover the needs. She indicated that he was unhappy at having to withdraw the capsules.

[289] Ms. Proulx indicated that Mr. Singh attended the Standing Committee's Subcommittee on the Senate Estimates meeting of December 1, 2015. She testified that without a doubt, he was asked questions, as were the other directors, which he might have answered. She stated that she did not answer for him unless a subcommittee member asked her a question directly and that at no time did she cut Mr. Singh off. She noted that the formal nature of the subcommittee meant that one had to wait for the chairperson to assign the floor before intervening. She stated that she did not remember Mr. Patrice preventing Mr. Singh from answering a question.

r. Overtime claim

[290] In her testimony, Ms. Proulx made reference to a situation in the past in which an employee had legitimately requested substantial overtime. According to her, everyone knew that that person was working long hours. In August 2015, the Executive Committee decided to request of the Standing Committee's Subcommittee on the Senate Estimates that the Senate hire someone to help with the work and to reduce the overtime.

[291] Ms. Proulx indicated that in the fall of 2015, an auditor from the firm KPMG also noted the substantial number of overtime hours worked by that employee. Ms. Proulx testified that she informed the auditor at that time that action had been taken, namely, the request to hire someone that was made to the Standing Committee's Subcommittee on the Senate Estimates, which was to meet in December. According to her, the situation was shared with the subcommittee, and there was never any intention to hide anything from the subcommittee.

s. Funding French training for the senators' staff

[292] In her testimony, Ms. Proulx returned to an incident in June 2015, when a Human Resources Directorate briefing note indicated two options for funding language training in Saint-Jean for senators' staff. She explained that she did not understand why Mr. Singh was irritated about the choice of one option, given that the briefing note had proposed it and that he had received a copy of the note. She also stated that she wondered why his email was copied to Mr. Lafrenière, Director of Internal Audit and Strategic Planning. According to her, by sending a copy to Mr. Lafrenière, Mr. Singh wanted to suggest that the option chosen was inappropriate. The briefing note was not adduced in evidence.

t. Alleged comments against senators

[293] When she was asked about comments that she allegedly made in two different circumstances against visible-minority senators, Ms. Proulx denied ever using words such as, "these people". According to her, she does not use that expression, which is not part of her language; it is not part of her "DNA" to make such comments about someone's race. She maintained that if she did make a comment, it was related to the actions of the individuals in questions and that the fact that senators in general have big egos; it was nothing about their race.

u. The November 24 email

[294] Ms. Proulx testified that she found the November 24 email discouraging and distressing (Exhibit G-1, tab 1). She stated the following about when she read it: "[translation] I was stunned."

[295] According to Ms. Proulx, contrary to the email's allegations, nothing was ever hidden from the Standing Committee and the Steering Committee. She maintained that her approach was to tell them everything and see how they would take the information. According to her, things were not always rosy in the Steering Committee as its members were not always happy with the answers, but it was a matter of credibility, and over time, she had been able to build that credibility with them. Contrary to the email's allegations, she also strongly denied not presenting all options to committees for consideration.

[296] Ms. Proulx stated that her policy was to provide all relevant information and options in the briefing notes that were submitted for Standing Committee and Steering

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

Committee meetings. According to her, if they rejected or chose an approach, it was not because they were not informed. She added that this way of doing things, which was to provide all the information, was a form of security for her.

[297] In her review of the email, among other things, Ms. Proulx maintained that among her directors, Mr. Singh most often attended Standing Committee and Steering Committee meetings. She also indicated that she did not understand why he had written that the rules for hiring Ms. Legault had been changed, given that he had wanted to waive the rules for annual vacation by providing one week of additional leave.

[298] Ms. Proulx testified that she then shared the November 24 email with her two colleagues, Mr. Robert and Mr. Patrice, and stated that she was at the end of her rope.

[299] It was immediately decided that the Human Resources Directorate would temporarily report to Mr. Robert. Ms. Proulx said that the accusations were very serious and that since she was involved, she could not be part of the discussions on the matter. She stated that she was not involved after that.

[300] When she was asked if she had wanted Mr. Singh terminated, Ms. Proulx replied that she had not. She would have liked them to work together. With respect to the discrimination allegation, she stated that she had a great deal of difficulty with it and that it hurt her. She said that she saw it as a personal attack; the accusation was contrary to her values, and that type of attitude was simply not in her nature. She maintained that she had never discriminated against anyone. She reiterated the fact that while she was the director of finance and procurement and chief financial officer, her directorate had a higher number of employees from equity groups, including visible-minority employees, than elsewhere.

[301] Ms. Proulx confirmed that around November 25, 2015, she spoke briefly with Senator Housakos, who told her, "You are out of it; we are going to take care of it." He also asked her if there was anything he should know. She then told him that there was nothing, except that she and Mr. Singh had had difficult exchanges.

[302] Senator Housakos did not tell her that Mr. Singh would be let go. Ms. Proulx said that she did not give any documents to Senator Housakos or to Mr. Robert and

Mr. Patrice. Nor did she comment on the allegations in the November 24 email. According to her, the Senator never said that there would be an investigation.

[303] Ms. Proulx also stated that it had been hard for her to be suspected of discrimination and that it was difficult to express how it felt. When she was asked about the actions that the Senate took against discrimination, she replied that several efforts were made, such as encouraging self-identification, creating a Standing Committee subcommittee to deal with employment-equity, and conducting staffing processes using numbers to ensure that the candidates were assessed anonymously.

[304] She also indicated that the recruiting practice was to go to other organizations with the idea of trying to recruit candidates from the four equity groups. She also pointed out that in the end, the Senate is a small organization, and that often, to hire someone new, someone has to leave.

2. Mr. Pleau

a. Changes to the Senate's administrative structure and Mr. Singh's letter of offer

[305] Mr. Pleau has been working part-time for Senator Claude Carignan since January 1, 2020. In 2014-2015, he was the chief of staff for the Speaker of the Senate, who first was Senator Nolin, and then Senator Housakos.

[306] Mr. Pleau indicated that in early 2015, Speaker Nolin, then Chair of the Standing Committee and the Steering Committee, asked him to set up a new administrative structure in the Senate to be made up of three sectors, comprising one that would include everything within the parliamentary domain; one that would include administrative activities such as human resources, finance, and information services; and finally, one responsible for legal matters in the Senate.

[307] Mr. Pleau testified that after outlining the new structure, he asked Mr. Singh to suggest options about it. In that respect, Mr. Pleau indicated that it was up to the Privy Council Office to decide the level of the positions of the chiefs of the parliamentary and legal sectors and that for administration, the Speaker of the Senate had decided on the SG-05 level after involving consultants. None of the three members of the Executive Committee was involved in the classification decisions.

[308] Mr. Pleau said that he did not recall whether Mr. Singh had suggested posting a notice of intent to appoint Ms. Proulx Chief Corporate Services Officer but that regardless, the decision was made, and he wanted to act quickly.

[309] Mr. Pleau said that he was somewhat acquainted with Mr. Singh. He stated that he met Mr. Singh in January 2015. Mr. Singh told Mr. Pleau that he was not a regular Senate employee but instead that he had been under an Interchange Canada assignment between the School and the Senate for more than 18 months.

[310] Mr. Pleau testified that he told Mr. Singh that he would make his Senate status permanent and asked him to prepare a letter of offer under the applicable Senate policies. As for salary, Mr. Pleau indicated that Mr. Singh had told him that he had not been entitled to the performance bonus because of the terms of the Interchange Canada assignment. Mr. Pleau stated that he was not aware of the details in the assignment agreement but that regardless, the salary should have been consistent with Senate policies.

[311] Mr. Pleau indicated that he did not recall asking Mr. Singh to prepare the letter by the end of the day, but he acknowledged that he wanted the new structure to be in place quickly in January 2015.

[312] With respect to Mr. Singh's assertion that Mr. Pleau told him to put what he wanted in the letter of offer, Mr. Pleau stated that he had said that "[translation] it had to be based on Senate policies". In this respect, Mr. Pleau insisted that words like "anything you want" do not work for him and that he is more along the lines of "what I want ...".

[313] With respect specifically to the probationary period, Mr. Pleau stated that Speaker Nolin and the Steering Committee were of the view that given that Mr. Singh had been at the Senate for 18 months, he did not need to be subject to another probationary period.

[314] With respect to the leave transfer, Mr. Pleau stated that it was not discussed and that in his view, it was precisely one of the things to be done following Senate policies.

[315] According to Mr. Pleau, although Speaker Nolin signed the letter of offer, Speaker Nolin did not read it carefully, and it was Mr. Singh's responsibility to ensure that his letter of offer's contents were consistent with Senate policies.

[316] With respect to the fact that Mr. Singh was disciplined for preparing his letter of offer and its contents, Mr. Pleau indicated that he learned of it after the letter of reprimand had been issued. He said that he was not happy to learn the issues surrounding the letter of offer but that at the same time, it all seemed “[translation] venial and not the end of the world”.

b. Attending Standing Committee and Steering Committee meetings

[317] Mr. Pleau testified that he was aware of the decision not to allow directors to attend Standing Committee and Steering Committee meetings other than by invitation (Exhibit G-2, tab 14). According to him, it was completely unnecessary for the directors to attend. They could be invited when needed. He was categorical that the decision came directly from Speaker Nolin and that he and the members of the Standing Committee fully supported it. Mr. Pleau stated that the decision applied to all directors from the three sectors.

[318] Mr. Pleau stated that he and the three members of the Executive Committee agreed on the agenda to be presented to the Standing Committee or the Steering Committee and that they decided who should be invited. He stated that he attended all Standing Committee and Steering Committee meetings in the first half of 2015. According to him, Mr. Singh was the director who attended the Steering Committee meetings most often during that period. As for Standing Committee meetings, Mr. Pleau stated that not many had been held and that regardless, the three members of the Executive Committee were always present and could answer questions.

c. The termination of Mr. Singh’s employment

[319] Mr. Pleau submitted that after the November 24 email was sent, he attended a meeting with Mr. Patrice and Mr. Robert. Mr. Pleau indicated that he was not happy with the decision by Mr. Robert and Mr. Patrice that the Human Resources Directorate would report to Mr. Robert. According to Mr. Pleau, the decision was up to the Standing Committee because the administrative structure had been changed, which required the Committee’s consent.

[320] According to Mr. Pleau, Mr. Patrice spoke of launching an investigation into the allegations in the email. Mr. Pleau testified that he and Senator Housakos were of the opinion that an investigation would not change anything in that it was clear from reading the email that Ms. Proulx and Mr. Singh could no longer work together.

[321] As for Mr. Singh's allegations against Ms. Proulx in his email, Mr. Pleau revealed that he had been stunned, shocked, and surprised to see the falsehoods in it as well as the emotional barrage directed at Ms. Proulx. Mr. Pleau reiterated that Ms. Proulx did not make the decision to not allow the directors to attend Standing Committee and Steering Committee meetings. In addition, he insisted that the Speaker of the Senate and the Steering Committee decided to request a functional review of the Human Resources Directorate, not Ms. Proulx, as alleged. According to Mr. Pleau, everyone was aware of that decision.

[322] With respect to the racial considerations raised in the November 24 email, Mr. Pleau stated that no one had ever made a distinction based on race. He also stated that he had never received any information to indicate that Ms. Proulx did not share information with her subordinates.

[323] According to Mr. Pleau, Senator Housakos read the November 24 email. In consultation with two colleagues, Senator Furey and Senator Wells, it became clear to Senator Housakos that Ms. Proulx and Mr. Singh could no longer work together. According to Mr. Pleau, Senator Housakos phoned his two colleagues. All three concluded that Mr. Singh's employment was to be terminated without cause. Mr. Pleau stated that he agreed with that decision, given that Mr. Singh and Ms. Proulx could no longer work together, and that Mr. Singh had distorted reality in the November 24 email.

3. Mr. Patrice

[324] Mr. Patrice also testified for the Senate. He is the deputy clerk of the House of Commons. He has been responsible for all corporate services since 2017. Before that, he was a law clerk and parliamentary counsel in the Senate for many years and was already in that role when in January 2015, the new administrative structure was implemented (Exhibits E-1, tab 2, and G-2, tab 13).

a. Mr. Singh's appointment as the director of human resources

[325] Mr. Patrice testified that he had a very good relationship with Mr. Singh, that he was a good colleague, and that since they were in the same building and on the same floor, they saw each other several times a day. Mr. Patrice indicated that he was pleased for Mr. Singh when he was appointed Director of Human Resources, although he was not involved in the appointment process.

[326] As for the decision to post a notice of intent to appoint, Mr. Patrice said that he relied on Ms. Vanikiotis's recommendation and that Mr. Singh was not happy that one was posted (Exhibit G-2, tabs 10 to 12). Mr. Patrice testified that he was not involved in the decision to not issue a notice of intent to appoint Ms. Proulx Chief Corporate Services Officer. He also categorically denied asking Ms. Vanikiotis to not issue one for fear that someone could file a grievance about Ms. Proulx's early appointment.

b. Attending Standing Committee and Steering Committee meetings

[327] With respect to the decision not to allow directors to attend Standing Committee and Steering Committee meetings unless they were invited, Mr. Patrice indicated that those committees made that decision because they felt that too many people attended and that it was a waste of the directors' time (Exhibit G-2, tab 14). According to him, the committees' decision was explained to all the directors, including Mr. Singh.

[328] Mr. Patrice testified that he attended those meetings from January to June 2015. According to him, Mr. Singh was invited to the meetings as often as the others were, but Mr. Patrice never had the record of who attended.

c. Mr. Singh's disciplinary hearing, and the letter of reprimand

[329] Mr. Patrice indicated that sometime in May 2015, he met with Mr. Singh in the presence of Ms. Proulx, Mr. Robert, and Mr. Bédard, so that Mr. Singh could provide his version of the facts of drafting his letter of offer. Mr. Patrice explained that although he did not agree with the salary that Mr. Singh assigned to himself and the fact that Mr. Singh had decided to waive the probationary period, in his view, the real issue was that Mr. Singh had not informed Mr. Pleau of the available options.

[330] With respect to the leave transfer, Mr. Patrice was of the view that it was more serious, as Mr. Singh had transferred financial obligations from the public service to the Senate, which was contrary to the Senate's relevant policy. According to Mr. Patrice, at the May 2015 meeting, Mr. Singh reportedly said that he was not aware of that policy.

[331] With respect to the letter of reprimand issued to Mr. Singh on June 12, 2015, as a disciplinary measure, Mr. Patrice indicated that he agreed with its contents and argued that Mr. Singh's fault was that he had not discussed the contents of the letter

of offer with his superiors. For Mr. Patrice, when one prepares one's letter of offer, its terms must be discussed with one's supervisor (Exhibit G-2, tab 22).

[332] Mr. Patrice indicated that Mr. Singh had expressed remorse and acknowledged that he was not aware of the leave-transfer policy. Mr. Patrice stated that Mr. Singh was pleased to see that the sanction was only a letter of reprimand, and he even said, "I would have fired myself."

d. The relationship between Mr. Singh and Ms. Proulx

[333] Mr. Patrice testified that the relationship between Mr. Singh and Ms. Proulx was not very good and that Mr. Singh sometimes came to see him to discuss a matter without going through Ms. Proulx first. That resulted in her sometimes being unaware of certain issues. Mr. Patrice testified that he had to regularly remind Mr. Singh to first inform Ms. Proulx (Exhibit E-1, tabs 15 and 19). According to Mr. Patrice, although Mr. Singh could always talk to him, Mr. Singh had to talk to Ms. Proulx first, especially on human-resources files that could have an impact. Mr. Patrice testified that being of a patient nature, he often had to remind Mr. Singh to go through Ms. Proulx on a given subject.

e. Ms. Vanikiotis's Interchange Canada assignment

[334] Mr. Patrice testified that when he and Mr. Robert learned that Ms. Vanikiotis was considering an assignment outside the Senate through an Interchange Canada assignment, they wanted to talk to her to convince her to stay at the Senate. According to him, Ms. Vanikiotis had experience and corporate memory of the Senate's activities; it would have been a shame had she left. After speaking with him and Mr. Robert, Ms. Vanikiotis decided to remain at the Senate. According to Mr. Patrice, there was tension between Ms. Vanikiotis and Mr. Singh (Exhibit G-2, tab 20).

f. Proposed changes to the Human Resources Directorate

[335] Mr. Patrice testified that he was aware that Mr. Singh wanted to reorganize the Human Resources Directorate and that Mr. Singh and Ms. Proulx had differences of opinion (Exhibit E-1, tab 25). Mr. Patrice indicated that he understood some of Ms. Proulx's concerns about Mr. Singh's proposals. He also indicated that Mr. Singh and Ms. Proulx had tension and that he counselled them to dialogue. Mr. Patrice explained that Mr. Singh had to make his decisions in the organization's best interests. As for the reference to "regain trust" in Mr. Patrice's June 21, 2015, email to Ms. Proulx and

Mr. Robert, he explained that those discussions with Mr. Singh took place in June 2015, just after Mr. Singh received the letter of reprimand (Exhibit E-1, tab 25).

g. Micromanagement

[336] When he was asked whether Ms. Proulx micromanaged Mr. Singh, Mr. Patrice indicated that it was a matter of style and perspective. According to him, Ms. Proulx wanted to be informed. He stated that her management style differed from Mr. O'Brien's and that indeed, she was more involved in the areas for which she was responsible. The organizational structure during Mr. O'Brien's time had several sectors reporting to him, so he was less involved.

[337] With respect to Mr. Singh's alleged discussion with the Executive Committee in August 2015 in which the issue was raised of who was to deal with a harassment complaint against a member of that committee, Mr. Patrice was categorical that he stated at that time that it would be the Steering Committee and not one of the other two members of the Executive Committee who would handle such a complaint.

[338] Mr. Patrice testified that at that same meeting, he reacted to Mr. Singh's assertion that Ms. Proulx was not qualified to speak on behalf of the Human Resources Directorate. Mr. Patrice said that he told Mr. Singh that Ms. Proulx had made a career in human resources, so Mr. Singh could not say that she was unqualified. According to Mr. Patrice, Mr. Singh's assertion was general and not a reference to situations involving only the Standing Committee and the Steering Committee (Exhibit G-2, tab 29).

h. The Senate's main estimates

[339] Mr. Patrice testified that he is always present with his directors at the meetings of the Standing Committee's Subcommittee on the Senate Estimates, at which the sectors request additional resources for the coming year. He stated that he attended the December 2015 meeting, as did Mr. Singh.

[340] According to Mr. Patrice, a senator asked Mr. Singh a question, and he answered. Mr. Patrice denied that he prevented Mr. Singh from answering or that he touched Mr. Singh's arm to prevent him from answering. Mr. Patrice also stated that he did not recall whether Ms. Proulx answered in Mr. Singh's place or interrupted him. According to Mr. Patrice, both Mr. Singh and Ms. Proulx answered the questions.

[341] As to whether he had ever heard Ms. Proulx refer to non-Caucasian senators as “these people”, Mr. Patrice said that he had never heard any such thing.

[342] Returning to an incident in which the employment of an employee in Mr. Patrice’s sector had allegedly been terminated, Mr. Patrice explained that he had heard of some issues in one of his directorates and that he had asked Mr. Singh to carry out a “workplace assessment” of the situation.

[343] According to Mr. Patrice, the employee at issue had also made a complaint against her supervisor and had been the subject of much more serious allegations. Although some parts of the complaint against the supervisor were substantiated, nevertheless, the facts were much less serious than the employee had alleged. In the circumstances, Mr. Patrice stated that the decision had been made to terminate the employee’s employment and to orally reprimand the supervisor.

[344] According to Mr. Patrice, Mr. Singh was consulted throughout the matter, and he agreed with the decision to terminate the employee’s employment, but instead, he would have given her a lump sum. Mr. Patrice insisted that the employee’s offences were serious and that they did not compare to the one committed by the director who yelled at the employee, which explained the difference between the two responses.

i. The November 24 email

[345] Mr. Patrice testified that Ms. Proulx forwarded him the November 24 email. He said that he was surprised and shocked by its allegations. According to him, it was the first time Mr. Singh claimed to be a victim of racism.

[346] Mr. Patrice indicated that he and Mr. Robert then decided that the Human Resources Directorate would report to Mr. Robert for the immediate future and that they would inform the Steering Committee of the situation.

[347] Mr. Patrice testified that contrary to Mr. Singh’s allegation, the Executive Committee always consulted the Human Resources Directorate before making decisions. With respect to the “workplace assessment” situation referred to on page 3 of the email, Mr. Patrice indicated that it was the matter mentioned earlier, in which an employee’s employment was terminated. According to Mr. Patrice, the Executive Committee made the decision. He said that he was surprised to see it referenced in

Mr. Singh's email. In short, Mr. Patrice testified that he did not understand why Mr. Singh said that the Human Resources Directorate had not been consulted.

[348] Mr. Patrice indicated that he and Mr. Robert met with Mr. Singh the next day. At that time, they told him that the Human Resources Directorate would report temporarily to Mr. Robert and that they would recommend to the Steering Committee that an investigation be initiated under the harassment policy.

[349] Mr. Patrice insisted that contrary to what was stated in Mr. Singh's November 26, 2015, email, he and Mr. Robert had in fact said that they would recommend an investigation to the Steering Committee, not that there would be one (Exhibit G-1, tab 2). According to Mr. Patrice, the Steering Committee had to decide whether an investigation would be launched. Mr. Patrice pointed out that Mr. Singh was surprised that Ms. Proulx shared the November 24 email with her two colleagues on the Executive Committee. According to Mr. Singh, it was a private email.

j. The termination of Mr. Singh's employment

[350] Mr. Patrice testified that he and Mr. Robert reported to the Steering Committee and that they recommended launching an investigation under the harassment policy. According to him, Senators Housakos, Wells, and Furey reviewed the November 24 email and concluded that some of the things that Ms. Proulx was accused of in it had resulted from their decisions, not hers. They then instructed Mr. Patrice and Mr. Robert to terminate Mr. Singh's employment.

[351] Mr. Patrice indicated that Mr. Robert signed the letter of termination as he was Mr. Singh's supervisor at that time (Exhibit G-1, tab 3). Mr. Patrice testified that he and Mr. Robert gave the letter of termination to Mr. Singh and that given the circumstances, things went relatively well. Mr. Patrice testified that he was of the opinion that as a result of the November 24 email, there was no possibility of reconciliation between Mr. Singh and Ms. Proulx.

[352] With respect to the letters that Mr. Singh's lawyer sent to the members of the Standing Committee, Mr. Patrice indicated that he had been called by Senator Furey, who had become the Speaker of the Senate and the chair of the Standing Committee on December 4, 2015. Speaker Furey gave him the letters and asked that Mr. Singh's

lawyer contact the Senate's lawyer on the matter, which Mr. Patrice carried out (Exhibit G-1, tab 4).

[353] With respect to the newspaper articles commenting on the termination of Mr. Singh's employment, Mr. Patrice stated that the Senate's policy was to not comment on personal matters (Exhibit G-3, tab 6). He maintained that he was not aware that anyone in the Senate had commented to the media on the termination of Mr. Singh's employment.

4. Senator Housakos

[354] Senator Housakos was the Senate's last witness. He was appointed to the Senate in 2009. He was the Deputy Speaker of the Senate when Senator Nolin was the Speaker. Following Speaker Nolin's death, Senator Housakos was appointed as the Speaker from May to December 3, 2015. He was also the Chair of the Standing Committee and the Steering Committee.

a. Changes to the Senate's administrative structure

[355] Senator Housakos explained that in 2015, under the leadership of Speaker Nolin, who had initiated them, the Senate went through important structural changes because, according to Senator Housakos, senators were worried that things were happening and that Senate employees were making decisions without the senators being made aware of them.

[356] Therefore, in early 2015, the decision was made to create the Executive Committee comprising the senior managers in charge of the three sectors: the Clerk of the Senate and the Clerk of the Parliaments under Mr. Robert, the Law Clerk and Parliamentary Counsel under Mr. Patrice, and the office of the Chief, Corporate Services, under Ms. Proulx's supervision.

[357] Senator Housakos explained that since senators are accountable for the administration of the Senate, when he was appointed the Speaker of the Senate, he was very hands-on with respect to subjects such as human resources and finance. He stated that he had no choice but to become more involved since the Senate went through some difficult times, such as the expenses scandal. That is why he decided to closely micromanage the Senate's administration, which meant that he interacted regularly with the Executive Committee.

[358] It also meant continuing what Speaker Nolin had started, which was meeting with every sector and visiting all Senate employees to give them the message that the senators wanted to be more involved in the administration of the Senate and that he had an open-door policy. Senator Housakos indicated that he wanted the Senate to be open and transparent. He insisted that if senators were to be held accountable and responsible for mistakes in the administration of the Senate, they needed to be aware of what was going on. The way to do that was to work with staff.

[359] Senator Housakos testified that many times, he also interacted sometimes formally and sometimes not with Mr. Singh, who visited him when he was appointed the Speaker of the Senate. Senator Housakos said that he was counting on Mr. Singh. He testified that he sought Mr. Singh's opinions on issues like when a chief financial officer had to be hired to replace Ms. Proulx or when the Senate was looking for a new director of communications. Senator Housakos pointed out that he probably spent something like 10 hours with Mr. Singh during those two processes. Senator Housakos's colleagues, Senators Wells and Furey, who were also members of the Steering Committee, also dealt with Mr. Singh. Senator Housakos described his relationship with Mr. Singh as cordial and professional. There were no issues.

b. The termination of Mr. Singh's employment

[360] Senator Housakos testified that on November 24 or 25, 2015, Mr. Patrice and Mr. Robert came to see him and showed him the November 24 email (Exhibit G-1, tab 1). Senator Housakos said that he was "flabbergasted" when he read it. He explained that four things in it caused him problems.

[361] Firstly, Senator Housakos said that he was troubled by the allegation that Mr. Singh had no "proximity" with the Steering Committee, which Senator Housakos said was false.

[362] Secondly, Mr. Singh stated that the Standing Committee and the Steering Committee were not receiving information. Senator Housakos stated that for him, this affirmation was troublesome and a big concern. He pointed out that if it were so, meaning that if Mr. Singh was aware of information that should have been brought to the attention of the Standing Committee and the Steering Committee and he did not bring it to Senator Housakos's attention, it in itself would have been a "reason to fire him".

[363] Thirdly, Senator Housakos also took aim at Mr. Singh questioning the need for and attributing to Ms. Proulx the decision to launch a functional review of the Human Resources Directorate. Senator Housakos qualified Mr. Singh's allegation as preposterous and insisted that the Steering Committee had made that decision. He pointed out that the Senate had already reviewed the Communications Directorate and that it wanted to do the same for the Human Resources Directorate. Senator Housakos insisted that Mr. Singh's allegation was not true and maintained that the senators made the decision, not Ms. Proulx.

[364] Fourthly, Senator Housakos explained that he investigated the allegation that Ms. Proulx was racist, which he concluded was simply unfounded. He indicated that he examined the November 24 email and concluded that Mr. Singh had given the Senate an ultimatum; he had drawn a line in the sand. Therefore, the Senate was forced to act.

[365] Still commenting on the email's allegations, Senator Housakos testified that there was no indication that senators were not receiving all the information from the Executive Committee members or that the information they received was not exact. He stressed the fact that it was clear to everyone that the senators would not tolerate inaccurate information.

[366] As for Mr. Singh not being invited to Standing Committee or Steering Committee meetings, Senator Housakos insisted that the decision to not have all directors attend had been the senators' decisions and not that of Ms. Proulx. He explained that having all the directors present was a waste of taxpayers' money. He specified that directors could still attend but only if they were invited and were needed. Senator Housakos recalled that Mr. Singh attended a couple of times after February 2015. Senator Housakos insisted that Mr. Singh's insinuation was false that Ms. Proulx tried to create a barrier between him and the senators.

[367] As for Mr. Singh's request that the Human Resources Directorate report to someone other than Ms. Proulx, Senator Housakos commented that doing so would have been unacceptable. He testified that Mr. Singh "wanted us to pick him over her".

[368] As for Mr. Singh's discrimination allegations against Ms. Proulx, Senator Housakos pointed out that he is also part of a minority group, being the son of immigrants, and that he is sensitive to discrimination issues. He indicated that he brought the allegation to Senators Wells and Furey and to about a dozen other

Caucasian senators who knew Ms. Proulx. Senator Housakos pointed out that some of those senators did not even like Ms. Proulx. However, they all found that there was no merit to the discrimination allegations against her. Senator Housakos insisted that it was important for him to talk to senators who knew Ms. Proulx and who could comment on the allegations. He also phoned some middle managers, including someone senior in the Human Resources Directorate. Senator Housakos insisted that everyone he spoke to reported that there was no merit in the discrimination allegations against Ms. Proulx.

[369] Senator Housakos testified that in his opinion, Mr. Singh did not accept the fact that the senators made changes to the Human Resources Directorate reporting structure. Senator Housakos testified that in this context, he told Mr. Patrice and Mr. Robert that given the content of the November 24 email, he did not see how a mediator could make a difference. In his view, Mr. Singh was unwilling to report to Ms. Proulx.

[370] Senator Housakos indicated that he and his colleagues, Senators Wells and Furey, were also perplexed that Mr. Singh had never said anything about it. He stated that if there was an issue, Mr. Singh should have raised it with one of the senators, since after all, he was the director of human resources. He did not raise one.

[371] Senator Housakos testified that for him, the only issue that needed investigating was the discrimination allegation against Ms. Proulx. Senator Housakos testified that he did look into it and that after talking to a dozen senators and managers, he was comfortable that it had no merit. He maintained that had there been any doubt that discrimination or racism had occurred, he would have ordered a full investigation. But it was not the case.

[372] Senator Housakos maintained that Mr. Singh was neither hired nor terminated because of his race.

[373] Senator Housakos testified that two days after meeting with Mr. Patrice and Mr. Robert, and after he had spoken to Senators Wells and Furey and other senators and Senate managers, he met again with Mr. Patrice and Mr. Robert. He told them about the decision to terminate Mr. Singh's employment.

[374] Senator Housakos indicated that he did not speak to Ms. Proulx about the decision. He said that it was shared in private with Standing Committee members a week later.

[375] In his testimony, Senator Housakos agreed that every time he interacted with Mr. Singh, it was cordial; he had no complaints, and Mr. Singh did a good job. However, he pointed out that after the November 24 email, he had concerns.

[376] When he was questioned about whether Ms. Proulx presented human-resources issues to the senators without Mr. Singh's knowledge, Senator Housakos responded that he did not recall Ms. Proulx doing that. He also pointed out that during his six-month tenure as Speaker of the Senate, human resources was not really a "hot topic". It involved mostly day-to-day matters that did not take much of the time of the committees.

[377] Senator Housakos indicated that if Mr. Singh had some issues, he never asked to see the senators about them; nor did he write to them. Senator Housakos expressed the view that Mr. Singh had had 18 months to raise any matter he thought was an issue but that he did not, despite the facts that the senators had clearly indicated to the administration employees that they wanted to be involved and that after all, Mr. Singh was the HR director.

[378] Senator Housakos stated that while the Senate had no whistle-blowing policy, nevertheless, senators received envelopes under their doors about all manner of issues. He stated that many employees did that, including some HR employees. He insisted that because Mr. Singh was the HR director and in charge, if an issue appeared, it was up to him to raise it.

[379] When he was questioned about the November 25, 2015, meeting and whether Mr. Patrice and Mr. Robert wanted the November 24 email investigated, Senator Housakos said that they suggested that a mediator or arbitrator be appointed to examine the issue. He maintained that only one important allegation was made, since the others were clearly baseless. It alleged that Ms. Proulx had discriminated against Mr. Singh based on race.

[380] In Senator Housakos's view, the three other allegations were "nonsense" and "stupid". He indicated that an investigation was an option. However, since he did not

want to waste time with the three allegations, he told Mr. Patrice and Mr. Robert that he would look into the racism one.

[381] Senator Housakos testified that in his view, Mr. Singh made an ultimatum in the November 24 email. They had to choose between him and Ms. Proulx. In his mind, Mr. Singh was unwilling to report to Ms. Proulx. Senator Housakos admitted that unconscious bias is possible and that the way to get around it is with training and by reviewing the practices in place. In his view, there is no discriminatory bias at the Senate but admitted that it could do more.

[382] Senator Housakos testified that he and Senators Wells and Furey made the decision to terminate Mr. Singh's employment about four days after the November 24 email. Senator Housakos agreed that Mr. Singh was terminated without cause and not for insubordination or harassment. He also agreed that only eight months later did Mr. Singh receive three months of pay in lieu of a termination notice, which was mentioned in the letter of termination (Exhibits G-10 and G-1, tab 3).

[383] Senator Housakos maintained that once Mr. Singh received the letter of termination, the matter was between counsel, that the Senate did not contact the media about it, and that per its policy, the Senate did not comment to the media about Human Resources matters. Senator Housakos indicated that as noted in the last paragraph of Mr. Patrice's January 6, 2016, email to senators, such issues should be addressed by a tribunal and not in the media (Exhibit G-3, tab 6).

IV. Summary of the arguments

A. For Mr. Singh

[384] Mr. Singh pointed out that this is a unique regime in which he both could grieve the termination of his employment under the *PESRA* and be covered by the protection of the *CHRA*.

[385] Mr. Singh reiterated that he was not challenging the Senate's right to terminate his employment on notice or payment in lieu of notice. Mr. Singh indicated that instead, he relied on the *CHRA* provisions that provide all the necessary protection and redress, including his right to reinstatement into his old position and to receive damages.

1. Overview

[386] Mr. Singh reviewed the facts of his Senate employment and of the termination. He stated that he was 43 years old when his employment was terminated. He was a level 2 executive, is fluently bilingual, is a member of a visible minority group, and was on a steady upward trajectory. Mr. Singh pointed out that as of the termination of his employment, he was the first and only visible minority among some 12 other directors. He also stressed the fact that to this day, there is no other visible-minority director at the Senate.

[387] Mr. Singh maintained that during his employment with the Senate, he was treated adversely and in a differential manner by his superior, Ms. Proulx, and that when he raised the matter, he was promised that his complaint would be investigated per the harassment policy. Instead, the Senate abruptly terminated him, and only eight months later did he receive his pay in lieu of a notice of termination. According to Mr. Singh, even though the Senate clearly terminated his employment without cause, it chose to give the impression that it had been for cause.

[388] Mr. Singh stated that the Filion report, prepared before he was hired, clearly contained very good reviews of his abilities. The evidence also demonstrated that Mr. Singh did a good job as the director of human resources. His performance was good and was viewed as such by Speaker Nolin and all the witnesses. He received the maximum performance bonus.

[389] Unfortunately, his career is now diminished because of the wrongful actions of the Senate, which were done in bad faith. Mr. Singh is now almost 50 years old and is 3 levels down in terms of employment compared to when he joined the Senate at the end of 2013. Mr. Singh maintained that the treatment he was subject to during his Senate employment was carried out in bad faith and violated his *CHRA* rights.

[390] As for remedy, Mr. Singh submitted that he should be reinstated into his position, with back pay. In addition, Mr. Singh asked that he receive appropriate damages under the *CHRA* as well as under common law to cover the infringement of his human rights and the bad-faith treatment as well as aggravated damages for harm to his reputation, additional mental distress, and harm to his dignity.

2. Jurisdiction and remedial authority

[391] Mr. Singh insisted that the *CHRA* is quasi-constitutional legislation and that the Senate is not above the law. With respect to jurisdiction and remedy, Mr. Singh referred me to ss. 68(2) and (4) of the *PESRA* as well as to s. 53 of the *CHRA*, which provides for reintegrating a person who was terminated in violation of that Act.

[392] He also referred me to *Canada (House of Commons) v. Vaid*, 2005 SCC 30 at paras. 82 and 88, in which the Supreme Court of Canada confirmed that the *CHRA* applies to the Senate and that under the *PESRA*, an adjudicator can order reinstatement. The details of the requested remedies will be dealt with later in this decision.

3. Discrimination

[393] In his argument, Mr. Singh argued that these three distinct acts of discrimination are at issue:

- 1) differential treatment and harassment of him by Ms. Proulx and the Senate, contrary to ss. 7 and 14 of the *CHRA*;
- 2) failure to investigate the racial discrimination allegations, contrary to ss. 7 and 10 of the *CHRA*; and
- 3) termination of employment for raising the racial discrimination allegations, contrary to ss. 7 and 14 of the *CHRA*.

a. Differential treatment and harassment of Mr. Singh by Ms. Proulx and the Senate

[394] Mr. Singh reviewed the facts of his arrival at the Senate in 2013. He was then classified EX-01. Mr. Singh stressed the fact that the Filion report indicated that Mr. Singh had strong leadership skills and that he exceeded expectations as an ethical leader (Exhibit G-2, tab 2). Mr. Singh pointed out that while he was an EX-01 at the School, the position with the Senate was at the SEG-02 or EX-02 group and level.

[395] Mr. Singh also mentioned that the Senate's selection board, which included Ms. Proulx, underlined the fact that he had deep human-resources knowledge (Exhibit G-2, tab 3). Mr. Singh stated that clearly, he was a high-performing executive when he joined the Senate. Mr. Singh indicated that all this is important, especially since when considering how a high performer like him was treated, one may draw only one inference, which is that discrimination played a role in how Ms. Proulx dealt with him.

[396] Mr. Singh added that during his employment search after the termination of his employment, he encountered problems, certainly not because of his good professional background but rather because of the media coverage and rumours about the termination.

[397] Mr. Singh also stressed that the relationship could have improved between him and Ms. Proulx had the Senate simply resorted to a third party, like a mediator, to try to solve their conflict. Instead, it chose to terminate his employment without looking at other means of resolution.

[398] According to Mr. Singh, he continually tried to get Ms. Proulx to agree that something should be done. Unfortunately, she turned him down.

[399] Looking back at his arrival at the Senate, when he first reported to Mr. O'Brien, Mr. Singh said that he fit well in his new environment. Mr. Singh had good relationships with everyone. He had a staff of 20 to 25 employees. Bilateral meetings with Mr. O'Brien were rare; Mr. O'Brien let him do his job. Mr. Singh also received a good performance review and comments from Mr. O'Brien for the period from April to October 2014 as well as the maximum performance bonus he was entitled to (Exhibit G-2, tab 8).

[400] Mr. Singh pointed out that during his first year with the Senate, he attended Standing Committee and Steering Committee meetings, at which he had the opportunity to discuss human-resources matters directly with members of those committees.

[401] Mr. Singh indicated that the Speaker of the Senate, at the time Senator Nolin, invited Mr. Singh to discuss the new administrative structure that would be put in place. Mr. Singh stated that clearly, Speaker Nolin trusted him.

[402] Mr. Singh reviewed the facts of the drafting of his letter of offer. Mr. Singh stated that in January 2015, he met with Mr. Pleau, who was surprised that Mr. Singh was not a permanent employee of the Senate. Mr. Pleau wanted Mr. Singh to draft a letter of offer that day. Mr. Singh said that they did not discuss vacation or probation but that they talked about salary. Mr. Singh insisted that he simply followed instructions. The Steering Committee approved the letter on January 14, 2015. Speaker Nolin signed it (Exhibit G-2, tab 9).

[403] When addressing the issue of the letter of reprimand that was imposed on him for the letter of offer, Mr. Singh maintained that the discipline imposed was disproportional and harsh. Mr. Singh insisted that it was clearly a mistake and that when he saw the leave-transfer policy, he admitted his error. So, Mr. Singh questioned why after that, he was treated deeply suspiciously and as if he was dishonest. For Mr. Singh, the language in Mr. Pleau's email of January 20, 2015, is evidence of what was on Speaker Nolin's mind when he signed the letter (Exhibit G-2, tab 10).

[404] Mr. Singh returned to the fact that Ms. Proulx did not congratulate him after his appointment was announced and that she thought there should have been a competition for his position. For Mr. Singh, things started to go downhill after that. It shows not only that she was suspicious but also that while there is often no direct evidence of discrimination, nevertheless, there is unconscious discrimination, in that people follows stereotypes. She was immediately suspicious of her Director of Human Resources despite the fact that he had a stellar background.

[405] For Mr. Singh, appointing him in the way it was done was the reasonable thing to do. Ms. Proulx should have taken the time, without bias, to recognize that. Mr. Singh stated that he was hurt by her attitude; he could feel it. Mr. Singh indicated that people of colour can sense that something is going on.

[406] As for whether the notice of intent to appoint Mr. Singh should have been issued, he insisted that the entire issue is troubling. First, Mr. Singh expressed the view that there was no need for one (Exhibit G-1, tab 14). Moreover, he pointed out that it is curious that 20 minutes or so after he resigned from the public service, the notice was out (Exhibit G-2, tabs 11 and 12). So, if the grievance against Mr. Singh's appointment had been successful, he could have been out of a job, since he had resigned from the public service.

[407] Mr. Singh stressed the fact that while there was a need for a notice to appoint for him, there was none when Ms. Proulx was appointed Chief Corporate Services Officer. Mr. Singh indicated that it has been agreed that one should have been issued for Ms. Proulx's appointment. Therefore, clearly, there was different treatment. Despite the fact that Ms. Proulx testified that she did not know if one had been issued in her case, which Mr. Singh found doubtful, and that Mr. Patrice denied telling Mr. Singh not

to issue one, Mr. Singh urged me to conclude that after five years, Mr. Patrice might have forgotten that he asked Mr. Singh to not issue one for Ms. Proulx's appointment.

[408] Commenting of the decision to exclude the directors from Standing Committee and Steering Committee meetings, Mr. Singh stated that given the evidence, it is now known that the committees made it. Nevertheless, Mr. Singh questioned why that was not clearly communicated to him, and he continued to ask for an explanation. Mr. Singh stated that Ms. Proulx chose to act as a gatekeeper, which meant that he was invited to those meetings only a few times up to June 2015. That was demeaning for him; he felt worthless. After June, he was never invited again.

[409] Mr. Singh indicated that it is surprising that no human-resources subjects were discussed at either Standing Committee or Steering Committee meetings for five months (Exhibit G-2, tab 26). As to how often he appeared at those meetings compared to Ms. Bouchard or Mr. Lafrenière, Mr. Singh referred me to his testimony, in which he stated that it seemed like everyone went, except for him.

[410] Mr. Singh indicated that he was concerned that some human-resources issues were not addressed and that instead of discussing it, Ms. Proulx chose to keep him in the dark. She could have let him present some human-resources reports to the committees. She preferred to do it herself or to have Mr. Singh's managers present them, without his knowledge (Exhibit G-2, tab 21).

[411] According to Mr. Singh, Ms. Proulx did not compromise one iota about that issue. He asked how a visible minority would feel about that, especially in his context, as he was the only visible minority at the executive level in the Senate. As a senior executive, Ms. Proulx should have understood that. According to Mr. Singh, he perceived it as being treated differently. While he did not then say that it was discrimination, nevertheless, he questioned why Ms. Bouchard was allowed to attend those meetings and not him. He was treated differently. He also wrote in his pre-meeting notes in June 2015 that he was being treated differently. He referred to the fact that Ms. Proulx was hiring French Canadians, like her (Exhibit G-2, tabs 21 and 26).

[412] Mr. Singh also asked why, in 2016, Mr. Pressault was allowed to present to the committees after Mr. Singh's departure. Why did Ms. Proulx change the rules for Mr. Pressault? Mr. Singh challenged Senator Housakos's statement that the Senate

wanted to be transparent and open. Mr. Singh argued that had that been the case, then the Senate would have made it clear at the time who decided to no longer allow directors to attend Standing Committee and Steering Committee meetings, along with the reasons behind it.

[413] Mr. Singh argued that without involving Mr. Singh, the Executive Committee decided to discuss what their organization would look like. Before then, he had always been involved. Mr. Singh rejected Ms. Proulx's evidence that she still consulted him. In his view, she did so only after the fact.

[414] Mr. Singh argued that Ms. Proulx's behaviour as a manager was an issue. Mr. Singh said that before she was appointed Chief Corporate Services Officer, Mr. O'Brien let Mr. Singh manage and held bilateral meetings only when an issue arose that affected the Standing Committee and Steering Committee. Ms. Proulx simply micromanaged Mr. Singh's work.

[415] As an example, Mr. Singh referred to the Senate's compensation study, in which Ms. Proulx continuously intervened; she did not deny doing it. Mr. Singh maintained that clearly, an executive classified EX-05 who spends her time reviewing letters is micromanaging (Exhibit E-1, tab 17).

[416] Another example was the chief financial officer development program, in which Ms. Proulx again became involved and asked Mr. Singh to remove himself from it. He felt excluded. Mr. Singh insisted again that becoming involved like that is not part of an EX-05's job; the fact that she chose the selection board members and did not include a visible minority was also very unusual and telling. While Mr. Singh admitted that he never asked to be part of that board, he stated that nevertheless, Ms. Proulx should have known about the relevant policy and should have asked for a member of a member of a visible minority group to be part of it.

[417] According to Mr. Singh, it is also very revealing that no visible minority was selected from the process (Exhibit G-1, tab 15, page 6, section 2.6). Mr. Singh also pointed out that Ms. Proulx did not show the same concern to retain two of the visible-minority candidates for the chief financial officer development program as she did when Ms. Vanikiotis wanted to leave on an Interchange Canada assignment.

[418] Mr. Singh referred to Ms. Vanikiotis's interest in an Interchange Canada assignment as another example of Ms. Proulx's micromanagement. Once again, there was no excuse for her or Mr. Patrice's involvement. Mr. Singh was the delegated manager. He wanted to support Ms. Vanikiotis. It was his job as the manager to make the decision, not Ms. Proulx's (Exhibit G-2, tab 21).

[419] Addressing the issue of his letter of reprimand, Mr. Singh pointed out that he thought that the purpose of the April 2, 2015, meeting was to discuss the grievance filed against his appointment. To his surprise, Ms. Proulx and Mr. Bédard grilled him about his letter of offer. While the grievance was dismissed, the Executive Committee decided to proceed with a disciplinary hearing on May 15, 2015, about the letter of offer (Exhibits G-5 and E-1, tab 11).

[420] Mr. Singh indicated that while he might have been defensive with respect to the salary and the probation period, nevertheless, he was embarrassed and remorseful about the vacation-leave transfer. Mr. Singh pointed out that both Ms. Proulx and Mr. Patrice testified that the salary and probation were no big deal. Mr. Singh submitted that the issue of how much the salary should have been is arguable and that with respect to the probation period, Mr. Singh had already been at the Senate for 18 months when he was appointed Director of Human Resources. Everyone agreed that he had been through the probationary period. Therefore, in Mr. Singh's view, there was no ground for discipline with respect to the salary and the probation period.

[421] As for the vacation-leave transfer, Mr. Singh argued that it was a mistake. He simply employed a template that had been used to transfer a Senate employee to the House of Commons. Mr. Singh argued that Ms. Proulx made a big deal out of it, despite the fact that again, it was a simple error (Exhibit G-2, tab 22, page 2). According to Mr. Singh, discrimination can be detected when a situation like the vacation-leave transfer, with no intentional misconduct, is made into a big deal.

[422] In addition, disproportional discipline is a sign of discrimination. Mr. Singh argued that Ms. Proulx saw the incident through a certain lens, while Mr. Patrice might not have considered it as serious an offence as she did. He also indicated that the language in the last paragraph of the letter of reprimand is so strong that it amounts to harassment of Mr. Singh. There was no reason to say it, especially in light of the fact

that he had told Mr. Pleau that having him draft his letter of offer was unusual (Exhibit G-2, tab 22, page 2, third-last paragraph).

[423] Mr. Singh referred to the fact that immediately after the letter of reprimand was issued, Mr. Singh had less latitude; Mr. Patrice expressed that Mr. Singh was untrustworthy (Exhibit E-1, tab 25). Mr. Singh insisted that the discipline imposed on him for an honest mistake was disproportionate and more severe than the one imposed on Mr. Patrice's manager, who had received only an oral reprimand for yelling at his employee. Mr. Singh also stressed the fact that the senators were not informed about the matter.

[424] As for the proposed changes to the Human Resources Directorate, Mr. Singh argued that from the beginning, Ms. Proulx distrusted Mr. Singh's decisions, which might have been unconscious (Exhibit G-2, tab 24). Mr. Singh questioned whether, when Ms. Proulx emphasized to him that the Human Resources Directorate had to be "purer than pure", she again implied that he was dishonest. If not, why did she choose those words? She was suspicious of him (Exhibit G-2, tab 25).

[425] Mr. Singh argued that when he began to state that he was being treated differently, it should have raised a red flag at the Senate; senior management should have looked into the matter and tried to fix it. While Mr. Singh admitted that perhaps, he should not have said that Ms. Proulx was not a human-resources expert, Mr. Patrice and Mr. Robert should have realized that Mr. Singh and Ms. Proulx had issues and should have done something about it. They did not (Exhibit G-2, tab 29, page 2).

[426] Mr. Singh argued that the very formal letter sent to him on September 16, 2015, is another example of Ms. Proulx's micromanaging. She again raised the issue of his ethics (Exhibit G-2, tab 31, page 5).

[427] Mr. Singh pointed out that the letter also referred to Mr. Nunan's replacement. According to Mr. Singh, Ms. Eynoux, who was Mr. Singh's choice, was more experienced and senior than Ms. Blais, who was Ms. Proulx's choice. Mr. Singh questioned whether it should be concluded that Ms. Proulx was more comfortable with Ms. Blais, who shared Ms. Proulx's ethnic background.

[428] In Mr. Singh's view, this is a good example of unconscious bias, about which the Senate should have done things differently and not chosen the least experienced of

two candidates as Mr. Nunan's replacement. Mr. Singh indicated that Ms. Eynoux should have been chosen; that is how employment equity works in an institution. After all, Ms. Eynoux had more experience and was classified at a higher level than was Ms. Blais.

[429] Mr. Singh argued that he not only saw an issue with visible-minority representation. He referred to the Senate staff meeting at which he had to defuse a situation when a participant asked about the lack of visible-minority representation at the senior level. Mr. Singh argued that this anecdote, taken with other examples of differential treatment, leads to the conclusion that discrimination occurred.

[430] Turning to the events involving the capsules to be presented at the Senate budget subcommittee meeting scheduled for December 2015, Mr. Singh maintained that he did not recall being told, in the Senate lobby in August 2015, to drop the idea of presenting them capsules at the meeting (Exhibit E-1, tab 24).

[431] Mr. Singh turned to the November 16, 2015, meeting involving Mr. Singh, Ms. Proulx, and Ms. Legault and indicated that it was the beginning of the end for him. He said that Ms. Proulx and Ms. Legault "dressed [him] down" at that meeting; they embarrassed him. Ms. Proulx demonstrated a lack of respect toward him. Mr. Singh felt muzzled and humiliated.

[432] As for the November 24 email, Mr. Singh indicated that while it might not have been a formal complaint, nevertheless, he raised important issues with Ms. Proulx. He argued that in the email, he told her that they should try to sort things out.

[433] Addressing the issue of his allegations in the November 24 email, Mr. Singh relied on his testimony, in which he said that on the next day, Mr. Patrice and Mr. Robert told him that the statements in his email would be investigated (Exhibit G-1, tab 2). Mr. Singh disputed Mr. Patrice's affirmation that Mr. Patrice and Mr. Robert said only that they would recommend an investigation, not that they would carry one out. Mr. Singh stated that Mr. Patrice's recollection might not be accurate, since Mr. Patrice and Mr. Robert decided to change the reporting scheme so that the Human Resources Directorate would report to Mr. Robert temporarily. That decision goes with the proposition that there would be an investigation.

b. Failure to investigate the racial discrimination allegations

[434] Mr. Singh dismissed Senator Housakos's claim that he investigated Mr. Singh's allegations. For one thing, Senator Housakos did not even talk to Mr. Singh to obtain the details of the allegations; he did not follow the process. Moreover, Mr. Singh argued that Senator Housakos limited his inquiry to Caucasian senators and a Caucasian employee. For Mr. Singh, selecting only them to find out whether Ms. Proulx was racist cannot be described as an investigation. If anything, in the circumstances, it was offensive.

[435] Mr. Singh maintained that Senator Housakos's inquiry was inherently discriminatory. In Mr. Singh's view, Senator Housakos's approach was plainly simplistic, which constituted a breach of the harassment policy.

[436] In support of his arguments, Mr. Singh referred me to the following decisions: *Nelson v. Lakehead University*, 2008 HRTO 41 at paras. 90 to 93, 101, and 102; *Brar v. B.C. Veterinary Medical Association*, 2015 BCHRT 151 at paras. 732 and 743; *Turner v. Canada Border Services Agency*, 2020 CHRT 1 at para. 130; *Hinds v. Canada (Employment and Immigration Commission)* (1989), 10 CHRR D/5683 at paras. 41611 and 41617 to 41619; *Islam v. Big Inc.*, 2013 HRTO 2009; *Ananda v. Humber College Institute of Technology & Advanced Learning*, 2017 HRTO 611 at para. 121.

[437] Mr. Singh argued that failing to investigate, like in this case, amounts to discrimination, even if there are no leads to investigate, and referred me to *Hinds*, at paras. 41611 and 41617 to 41619.

[438] Mr. Singh maintained that not investigating his allegations sent the wrong message to employees that a member of a visible minority group will be fired for raising issues, and no investigation will take place. For Mr. Singh, the Senate knew the message it sent, which is why Mr. Patrice and Mr. Robert went to see Ms. Eynoux after the termination of Mr. Singh's employment.

[439] On the issue of the duty to investigate, Mr. Singh referred me to *Islam*, at para. 269. He also argued that in itself, the failure to investigate his allegations was an element of discrimination, even though the complaint was not upheld, as pointed out in *Ananda*, at para. 121.

[440] Mr. Singh argued that Senator Housakos should have spoken to him about the allegations. Senator Housakos's statement that Ms. Proulx has "no bone of racism" in her was simply not good enough; a decision is not to be made based only on an impression. See *Nelson*, at paras. 90 to 93, 101, and 102; and *Payette v. Alarm Guard Security Service*, 2011 HRTO 109 at para. 36.

c. Termination of employment for raising the racial discrimination allegations

[441] Mr. Singh questioned why his specific allegation that Ms. Proulx was not sharing information with the senators did not raise a red flag with Senator Housakos and incite him to inquire into it. Mr. Singh pointed out that being informed about what was going on in the Senate's administration was one of the main concerns Senator Housakos expressed in this testimony. In Mr. Singh's view, the only explanation is that Senator Housakos was racially motivated not to act on the allegation.

[442] While Mr. Singh stated that he did not believe that Senator Housakos is a racist, nevertheless, he stated that Senator Housakos was blinded by his bias, and since Senator Housakos is not part of a racial minority group, Senator Housakos has never experienced such treatment. That is why it would have been important for Senator Housakos to talk to people of colour when he had his discussions about whether Ms. Proulx was racist. Mr. Singh stated that an organization like the Senate can have every possible employment-equity policy, but that will not change things if people do not understand that people of colour experience discrimination.

[443] Mr. Singh maintained that Senator Housakos thought that Mr. Singh was playing the race card and that Senator Housakos decided to terminate him, even though Senator Housakos was unaware of the situation between Mr. Singh and Ms. Proulx. Mr. Singh argued that the fact that Senator Housakos thought that Ms. Proulx could not have discriminated against Mr. Singh because she had hired him into the Senate shows that Senator Housakos still thinks like people did in 1950.

[444] Mr. Singh also argued that the Senate was offended that a discrimination allegation had been made. Addressing Senator Housakos's concern that Mr. Singh and Ms. Proulx could no longer work together, Mr. Singh argued that it was probably driven by Senator Housakos's view that never can an employee continue to work for a superior once the employee raises discrimination. For Mr. Singh, this is a myth or

misconception that shows that Senator Housakos has flawed views of racial discrimination. Mr. Singh referred me to *Brar*, at para. 724.

[445] Mr. Singh stated that practically the only thing Senator Housakos knew about the letter of reprimand and the termination of Mr. Singh's employment was the fact that Mr. Singh had alleged that he had been discriminated against.

[446] Mr. Singh argued that both Mr. Patrice and Mr. Robert did not want to terminate his employment; rather, they wanted an investigation launched. The reasons that Senator Housakos now gave to terminate Mr. Singh's employment are not the same as the reasons stated in the December 2, 2015, letter. According to Mr. Singh, Mr. Robert knew that "things did not look good". Thus, he tried to put everything in the letter of termination. Mr. Singh asked me to draw an adverse inference from the fact that Mr. Robert did not testify and referred me to *Morgan v. Herman Miller Canada Inc.*, 2013 HRTO 650 at para. 108.

4. The test for *prima facie* discrimination

[447] Mr. Singh reviewed the three following points, which must be met to establish a *prima facie* case of discrimination in this case:

- the person is a member of a group listed under s. 3(1) of the *CHRA*;
- the person was subject to adverse treatment; and
- the person's race, colour, or national or ethnic origin was a factor in the alleged adverse treatment.

[448] Mr. Singh referred me to *Shaw v. Phipps*, 2012 ONCA 155 at para 14; *Turner*, at para. 45; and *Brar*, at para. 697.

[449] Mr. Singh argued that in this case, there is a nexus between Ms. Proulx's conduct and a prohibited ground of discrimination. In addition, to conclude that discrimination occurred, there is no need to prove that discrimination was the cause, only that it tainted the conduct. Mr. Singh referred me to *Turner*, at paras. 45 and 54; and *Brar*, at para. 700.

[450] Addressing the issue of proving that Mr. Singh was subject to adverse treatment, Mr. Singh stated that discrimination is rarely openly displayed. It is often based on inferences. Mr. Singh maintained that considering all the facts of Ms. Proulx's treatment of Mr. Singh, one has to conclude that she treated him adversely, even if it might have been unintentional.

[451] Racism is often unconscious, as stated in *Shaw*, at para. 34; *Turner*, at paras. 48 and 49; and *Brar*, at para. 699. The constellation of facts in this case must be considered. Mr. Singh indicated that I must examine all the circumstances and search for the “subtle scent of discrimination”, as indicated in *Turner*, at paras. 48, 54, and 107.

[452] Mr. Singh also asked me to conclude that the evidence that visible minorities are underrepresented at the Senate’s executive level could also support an inference that race was a factor in Mr. Singh’s treatment. Mr. Singh referred me to *Turner*, at paras. 54 and 106, and *Khiamal v. Canada (Human Rights Commission)*, 2009 FC 495 at paras. 80 to 84.

[453] Mr. Singh pointed out that the evidence is that he performed well in his job. Given that fact, he questioned why Ms. Proulx did not trust him. Also, why did the Executive Committee impose such disproportional discipline against his mistake with respect to his letter of offer? Why did that mistake become an ethical issue? Mr. Singh argued that I may infer only that discrimination was involved in all those actions, even if it was unintentional.

[454] Mr. Singh also insisted that the fact that the Senate’s executive level comprises no visible minorities is also evidence for concluding that discrimination occurred. Mr. Singh maintained that the measures that Senator Housakos and Ms. Proulx claimed were in place to address employment equity at the Senate were not enough and that the statistics lead to the conclusion of a “scent of discrimination” (see *Turner*).

[455] Mr. Singh drew a parallel between this case and *Khiamal*, in which where the employee also had difficulties with his supervisor. The Federal Court granted Mr. Khiamal’s judicial review application and concluded that the Canadian Human Rights Tribunal had failed to consider that discrimination was a contributing factor in the respondent’s decision and that it did not explain why it had failed to consider statistical evidence.

[456] Mr. Singh argued that once the *prima facie* case of discrimination is established, then the burden shifts to the Senate to provide a reasonable explanation. Mr. Singh stated that if the Senate cannot address it by establishing that the discrimination did not occur, that the evidence is unreliable, or that a more probable explanation can be offered, then discrimination will be established, as decided in *Turner*, at para. 53.

5. Remedy for a CHRA violation

[457] Mr. Singh asked for reinstatement into the position of Director of Human Resources, per s. 53(2)(b) of the CHRA. He also asked for full back pay and pension contributions, including bonuses, benefits, and pay increases for the reclassification, per s. 53(2)(c) of the CHRA, minus the income he earned after the termination of his employment. Mr. Singh asked that I set the bonuses at 10% and leave it to the parties to calculate the back pay but that I remain seized if the parties cannot agree on the amount. Section 53(2)(c) of the CHRA reads as follows:

53 (2) If at the conclusion of the inquiry the member or panel finds that the complaint is substantiated, the member or panel may, subject to section 54, make an order against the person found to be engaging or to have engaged in the discriminatory practice and include in the order any of the following terms that the member or panel considers appropriate:

...

(a) that the person compensate the victim for any or all of the wages that the victim was deprived of and for any expenses incurred by the victim as a result of the discriminatory practice

[458] Per s. 53(2)(e) of the CHRA, Mr. Singh also asked for \$15 000 for each breach of ss. 7, 10, and 14 and an additional \$20 000 under s. 53(3) for each reckless violation with respect to the failure to investigate his allegations and for the termination for raising racial discrimination allegations. This should all be awarded with interest, per s. 53(4) of the CHRA. Sections 53(2)(e), 53(3), and 53(4) of the CHRA read as follows:

53 (2)(e) ... that the person compensate the victim, by an amount not exceeding twenty thousand dollars, for any pain and suffering that the victim experienced as a result of the discriminatory practice.

(3) In addition to any order under subsection (2), the member or panel may order the person to pay such compensation not exceeding twenty thousand dollars to the victim as the member or panel may determine if the member or panel finds that the person is engaging or has engaged in the discriminatory practice wilfully or recklessly.

(4) Subject to the rules made under section 48.9, any order to pay compensation under this section may include an award of interest at a rate and for a period that the member or panel considers appropriate.

6. Damages

[459] Mr. Singh argued that in addition to the damages set out in the *CHRA*, he is also entitled to damages for harm to his reputation and aggravated damages for harm to his dignity, humiliation, and mental distress since the termination was done in bad faith and unfairly. He referred me to *Tipple v. Deputy Head (Department of Public Works and Government Services)*, 2010 PSLRB 83 (“*Tipple PSLRB*”); *Tipple v. Canada (Attorney General)*, 2012 FCA 158 (“*Tipple FCA*”); and *Doyle v. Zochem Inc.*, 2017 ONCA 130 at para. 49.

a. Damages for harm to reputation

[460] Mr. Singh argued that he is entitled to damages for the harm to his reputation, in accordance with *Tipple FCA*.

[461] Mr. Singh maintained that as in *Tipple PSLRB* and *Tipple FCA*, he was terminated abruptly, without explanation, which led to rumours and media leaks. The impression was that he had been terminated for cause, like harassment or insubordination. Therefore, his reputation was damaged by public knowledge of false allegations.

[462] The Senate also refused to confirm that Mr. Singh had been terminated without cause, despite being asked to. Mr. Singh argued that when Senator Housakos commented to the press, Senator Housakos appeared to give credence to the rumour that Mr. Singh had been terminated for cause. For Mr. Singh, therefore, the Senate failed to take reasonable corrective steps, as stated in *Tipple PSLRB* and *Tipple FCA*.

[463] Finally, Mr. Singh argued that clearly, the damage to his reputation negatively affected his efforts to find new employment. He maintained that he will suffer from that harm to his reputation for the rest of his career. He said that given that the Senate is a high-profile employer, where people talk, it made things even more difficult for him to find employment.

[464] Therefore, on Mr. Singh’s behalf, Mr. Singh asked for \$150 000 for the harm to his reputation and referred me to *Tipple FCA*, at para. 19; and *Lalonde v. Sena Solid Waste Holdings Inc.*, 2017 ABQB 374 at para. 75.

b. Aggravated damages for harm to dignity, humiliation, and mental distress

[465] Mr. Singh also seeks aggravated damages for a termination that was unfair and that was done in bad faith. In support of his claim, he stated that the Senate misled him by telling him that his allegations would be investigated; instead, it decided to terminate his employment without any warning. According to Mr. Singh, it was not only misleading and untruthful but also, by doing so, the Senate ignored its policy stating that allegations should be investigated. Mr. Singh argued that that was bad faith by the Senate and cited *Avalon Ford Sales (1996) Limited v. Evans*, 2017 NLCA 9 at paras. 45 to 49.

[466] Mr. Singh argued that in addition, the Senate never took the time to talk to him about his claims, which was a denial of basic fairness toward him. Mr. Singh cited *Lalonde*, at paras. 66 to 68.

[467] Mr. Singh also argued that the reasons detailed in the letter of termination are not consistent with the ones Senator Housakos stated when he testified. Moreover, Mr. Singh claimed, it took eight months before the payment in lieu of notice indicated in the letter of termination was provided to Mr. Singh. The Senate used it as leverage so that Mr. Singh would sign a release.

[468] Therefore, Mr. Singh claimed an additional \$100 000 in aggravated damages for the mental distress caused by the bad-faith treatment that he was subject to. Mr. Singh referred me to *Boucher v. Wal-Mart Canada Corp.*, 2014 ONCA 419 at para. 77; *Tipple PSLRB*, at para. 328; and *Doyle*, at para. 1. Mr. Singh stressed the fact that no medical evidence was submitted in those decisions.

B. For the Senate**1. Overview**

[469] The Senate began by stating that this entire case comes down to disagreements between Mr. Singh, Director of Human Resources, and his direct supervisor, Ms. Proulx, Chief Corporate Services Officer. It is also about his disagreement with her management style, throughout the time he reported to her, and with the Senate's decisions about managing its business.

[470] The Senate indicated that Mr. Singh and Ms. Proulx's relationship began on a positive note. They were colleagues; Ms. Proulx even acted as Mr. Singh's mentor.

However, things changed when she became his supervisor. Every time after that when she questioned him or pointed out a problem, he would react by stating that she was micromanaging him.

[471] For the Senate, clearly, Mr. Singh resented and questioned Ms. Proulx's authority. The Senate maintained that Mr. Singh was used to the laissez-faire management style of Ms. Proulx's predecessor, Mr. O'Brien. For the Senate, Ms. Proulx was within her rights to ask Mr. Singh questions since she was ultimately accountable before the Standing Committee and the Steering Committee for all human-resources issues; she wanted to be kept informed so that she could answer to the committees.

[472] Mr. Singh also vehemently disagreed with some of the Senate's decisions, including the one that no longer admitted directors to the Senate's meetings. He never accepted that decision, and he wrongly attributed it to Ms. Proulx.

[473] The Senate stated that the disagreements between Mr. Singh and Ms. Proulx reached another level in the November 24 email when he accused her of misconduct and claimed that some decisions were discriminatory, which he had wrongly attributed to her. The Senate stated that at the same time, he drew a line in the sand in the email when he asked to no longer report to her.

[474] The Senate argued that after reviewing the allegations in the November 24 email, the senators concluded that they were not substantiated. They decided to terminate his employment since the situation was no longer viable; their confidence in and trust in him had broken. Counsel maintained that since Mr. Singh disagreed with the senators' decisions as such, he could no longer continue to work for the Senate.

[475] The Senate indicated that the senators chose not to rely on a termination for cause; instead, they decided to terminate Mr. Singh's employment without cause, so they offered him three months of pay in lieu of notice. The Senate maintained that it was entitled to terminate Mr. Singh's employment without cause since it provided him with the pay instead of notice. With respect to the Senate's authority to terminate employment without cause, the Senate referred me to the Supreme Court of Canada's judgment in *Dunsmuir v. New Brunswick*, 2008 SCC 9.

[476] The Senate insisted that Mr. Singh was not discriminated against and that the termination was not in any way discriminatory. The Senate pointed out that Mr. Singh

abandoned the position that the Senate could not terminate his employment without cause. The Senate maintained that in the circumstances, given that no discrimination or *CHRA* breach was proven, Mr. Singh should not be reinstated and is not entitled to any damages under the *CHRA* or for the loss of his reputation.

2. Witness credibility

[477] The Senate argued that throughout the year in which Mr. Singh reported to Ms. Proulx, his behaviour toward her went well past just disagreeing with her. The Senate said that Mr. Singh continuously made derogatory statements about her and that he tried to belittle her. The Senate referred to Mr. Singh's testimony in which he stated that he did not want to "embarrass" her at a Senate meeting. He ridiculed her for her work on the compensation study by stating that someone classified EX-05 should not have been involved. He mocked her for her involvement in the chief financial officer development program by stating that her involvement was "insane", when she simply responded to his email.

[478] The Senate also pointed out that Mr. Singh said that it was shameful that Ms. Proulx did not consult him about the leadership development program for procedural and legislative clerks under Mr. Robert. The Senate pointed out that the program was not in Ms. Proulx's sector and that moreover, she was not even aware of it (Exhibit G-2, tab 23).

[479] For the Senate, Mr. Singh continually attributed motives to Ms. Proulx's decisions. For instance, the Senate referred to Mr. Singh's request to attend the Canadian Association of Parliamentary Administration conference and Ms. Proulx's explanation that a directive limited the number of participants to two. The Senate argued that the directive was quite clear that preapproval was needed to attend a conference and that in no way was there an element of discrimination in this situation through simply applying the directive (Exhibit G-9).

[480] Considering the issue of the directors attending Standing Committee and Steering Committee meetings, the Senate challenged Mr. Singh's testimony about the fact that other managers reporting to him attended them after the February 4, 2015, notice was sent. The Senate submitted that Mr. Singh provided no example of who would have attended. Additionally, Ms. Proulx refuted this statement. She said that the

only time would have been when the Senate hired a new chief financial officer; Ms. Vanikiotis attended while Mr. Singh was on holiday.

[481] The Senate also referred to Mr. Singh's affirmation during his testimony that on November 16, 2015, Ms. Proulx and Ms. Legault arrived at his office dancing and holding hands. Ms. Proulx denied it and said that she did not even really know Ms. Legault then, having met her only once before. The same thing was true with respect to Mr. Singh's affirmation that Ms. Proulx and Ms. Blais were friends. Again, the Senate argued that this evidence was not substantiated, and that Ms. Proulx denied it.

3. Legal issues in dispute

[482] The Senate argued that the only issues to be decided are whether the Senate violated Mr. Singh's rights under the *CHRA* and if so, determining the appropriate remedies.

a. The termination of Mr. Singh's employment was not discriminatory, and he did not prove a *prima facie* case of discrimination

[483] The Senate denied that it acted in a discriminatory way against Mr. Singh and argued that he failed to establish a *prima facie* case of discrimination.

[484] The Senate referred me to the Supreme Court of Canada's decisions in *Moore v. British Columbia (Education)*, 2012 SCC 61; and *Québec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center)*, 2015 SCC 39, in which it was decided that a complainant first has to establish a case of discrimination and that only then does the burden shift to the respondent to justify the conduct or practice; see *A.B. v. Easy Express Inc.*, 2014 CHRT 35; *Kirby v. Treasury Board (Correctional Service of Canada)*, 2015 PSLREB 41; and *Khiamal*.

[485] The Senate argued that Mr. Singh failed to establish a *prima facie* case of discrimination and that the Senate's evidence provided a reasonable explanation for all its actions, along with those of Ms. Proulx.

[486] Responding to the argument that Ms. Proulx had an unconscious bias against Mr. Singh because of his race, the Senate submitted that there is simply no evidence of it. The Senate maintained that invoking discrimination because the plaintiff thinks it occurred is not enough; evidence is required. For the Senate, Mr. Singh's belief that he

was discriminated against is not enough to establish a *prima facie* case of discrimination, as decided in *Filgueira v. Garfield Container Transport Inc.*, 2006 FC 785 (“*Filgueira FC*”) at paras. 30 and 31; *Le Page v. Canada Revenue Agency*, 2015 PSLREB 13; and *LaBranche v. Treasury Board (Department of Foreign Affairs and International Trade)*, 2010 PSLRB 65.

[487] In this case, there is simply no direct or circumstantial evidence that Ms. Proulx was biased, either consciously or unconsciously. For the Senate, except for Mr. Singh’s belief, there is also simply no evidence that Ms. Proulx treated him differently than other employees. His allegations were based on his belief; he erroneously perceived that he received differential treatment than did other employees. No evidence was adduced that other directors were treated differently. There must be something more; some independent evidence is required, other than his subjective beliefs, which confirms his impressions. The Senate referred me to *Filgueira FC*, at paras. 30 and 31.

[488] The Senate referred to Ms. Proulx’s testimony that she had worked with people of colour in the past with no issues and that she believes that all people should be treated the same. The Senate insisted that she provided reasonable explanations to the issues raised by Mr. Singh. For the Senate, this is an attempt to make this case broader than a conflict between two individuals by adding the concept of unconscious bias.

[489] The Senate argued that its witnesses adduced detailed evidence and provided reasonable explanations in their responses to all of Mr. Singh’s allegations. They also explained the reasons for the termination of his employment. The Senate submitted that the evidence is that the relationship between Mr. Singh and Proulx was broken as a result of his resentful behaviour toward her management authority.

[490] For the Senate, a difficult relationship between an employee and his or her supervisor is not enough to establish discrimination, as decided in *Baptiste v. Canada (Correctional Service)*, 2001 CanLII 5801 (CHRT) at para. 100; and *Hill v. Air Canada*, 2003 CHRT 9 at para. 165. The Senate submitted that Mr. Singh was frustrated with Ms. Proulx and that his view became tainted with dissatisfaction. The Senate referred me to *Hill*, at paras. 164 and 165; and *Baptiste*, at paras. 1, 96, 97, and 100.

[491] The Senate returned to when Mr. Singh had just been appointed Director of Human Resources and Ms. Proulx, as the new chief corporate services officer, became his supervisor. The Senate indicated that at first, their relationship was positive. The

Senate disputed the proposition that Ms. Proulx did not congratulate Mr. Singh on his appointment. The Senate argued that the evidence was that she had already done so by saying, “Good for you”, and that she did not do anything different from what she had done with others. She was happy for him. So, for the Senate, there was nothing suspicious in Ms. Proulx’s behaviour in this instance.

[492] The Senate argued that the relationship between Mr. Singh and Ms. Proulx started to change after he was disciplined with respect to his letter of offer. The Senate indicated that during her investigation into the grievance filed against the intent to appoint Mr. Singh, Ms. Proulx realized that the letter of offer was an issue.

[493] The Senate returned to Ms. Proulx’s evidence about her investigation and to her being troubled by the fact that Mr. Singh prepared his letter of offer, which, for her, constituted a conflict of interest. The Senate also pointed out that Speaker Nolin and Mr. Pleau were not made aware of the relevant policy’s details despite the fact that Mr. Pleau had asked Mr. Singh to prepare a letter in accordance with the policy. The Senate submitted that the evidence was that while waiving the probation period might not have been a big issue, Mr. Singh awarding himself a salary higher than the norm and the vacation-leave transfer were serious issues for Ms. Proulx.

[494] The Senate insisted that Mr. Singh drafting his letter of offer was not just a mistake. According to the Senate, Mr. Singh took pains in the letter to refer to some specific Senate policies but did not conform to them (Exhibits E-1, tab 5, and G-2, tab 9). The Senate submitted that Mr. Singh reacted combatively when Ms. Proulx first confronted him about the issue, over the phone. He made derogatory comments, such as “this is bullshit”, as she put in her note (Exhibit E-1, tab 11). The Senate indicated that only later did Mr. Singh express remorse about preparing the letter.

[495] The Senate argued that the letter of reprimand was not disproportionate in the circumstances and insisted that by preparing his letter of offer, Mr. Singh committed a breach of trust, which is why discipline was appropriate. The Senate insisted that the Executive Committee went with a letter of reprimand only because it wanted to give him another chance and to rebuild the relationship. Moreover, Ms. Proulx kept the letter in her office so that no one could see it, including senators who would have been upset by it.

[496] The Senate suggested that had Ms. Proulx wanted to get rid of Mr. Singh, she could have told the senators about it. She chose otherwise. For the Senate, this was clearly not an example of unconscious bias on her part. The Senate also pointed out that Mr. Singh could have grieved the letter of reprimand; he decided not to.

[497] In his argument, the Senate stressed Mr. Singh's tone in his many emails to Ms. Proulx (Exhibit G-2, tabs 20, 23, 25, 26, page 4, 29, and 30). The Senate pointed out that in his testimony, Mr. Singh tried to nuance his blunt statement about her at an Executive Committee meeting when he said, "Nicole is not an expert in HR — not qualified to make decisions on HR". The Senate said that despite that, Ms. Proulx awarded Mr. Singh the full 10% performance pay, even though she could have just prorated it to 8%. For the Senate, it was a sign that she tried to maintain a positive relationship (Exhibit G-2, tab 27).

[498] Returning to Ms. Proulx's comment that the Human Resources Directorate needed to be "purer than pure", the Senate maintained that the evidence is that it was about the Human Resources Directorate and not about Mr. Singh's ethics (Exhibit G-2, tab 25). The Senate insisted that with respect to the notion of unconscious bias, I should not consider circumstantial evidence when facing an actual explanation, as decided in *Hill*, at p. 131.

b. Mr. Singh's allegations were not substantiated

[499] The Senate maintained that not only was Mr. Singh not treated differently on the basis of his race or ethnic background but also that there is a legitimate explanation for each of his allegations.

[500] The Senate began by stating that at the beginning, in January 2015, the Executive Committee's approach, which was to discuss and decide how it would work as a committee and how it saw the new structure, was a very normal way to proceed. For the Senate, it made sense that the Executive Committee first agreed to the new structure before involving others.

[501] The Senate insisted that the three members of the Executive Committee were pressed to act quickly, had considerable Senate experience, knew all the employees, and knew how the Senate's new administration should work. So, it made sense that Mr. Singh was involved and was asked to implement the new model only after the

committee had decided the direction to take. So, for the Senate, there is no basis for suggesting that, as alleged, Mr. Singh was excluded. He was consulted at the appropriate time.

[502] Commenting on the decision to exclude all directors from Senate meetings unless specifically invited, the Senate argued that Mr. Singh wrongly attributed it to Ms. Proulx. The evidence is clear that the senators made that decision. For the Senate, all the Senate's witnesses testified that the senators were worried about leaks and that they thought that having all the directors present was a waste of resources.

[503] Furthermore, the Senate argued, there is also just no basis for Mr. Singh's claim that Ms. Proulx refused to provide him with an explanation. She testified that she did provide one; moreover, it was in writing (Exhibit G-2, tab 29, page 2). The Senate also pointed out that the decision applied to all directors, not just Mr. Singh. All the directors were disappointed. Again, Mr. Singh was not treated differently than were his colleagues.

[504] The Senate also indicated that from June 2015 until Mr. Singh departed, there were very few Standing Committee or Steering Committee meetings, since the summer arrived and was followed by an election in October, before which the Senate was not in session.

[505] Still on the issue of attending Senate committee meetings, the Senate stressed the fact that while Ms. Bouchard might have attended some, Ms. Proulx, Mr. Patrice, and Mr. Pleau all testified that from February 2015 to June 2015, Mr. Singh was probably the director who attended most often.

[506] Commenting on Mr. Singh's complaint that he did not know the human-resources issues that were presented at the Standing Committee and Steering Committee meetings, the Senate referred me to Ms. Proulx's testimony, in which she indicated that all briefing notes presented to the senators were prepared by each directorate. Any changes to them were returned to the directors. Therefore, there is no basis for Mr. Singh to claim that he did not know what took place or that he was not involved.

[507] On the issue of the Human Resources Directorate functional review, the Senate submitted that contrary to Mr. Singh's affirmation that Ms. Proulx decided to ask for it,

the evidence clearly demonstrated that it was the senators' decision. The Senate pointed out that the senators were concerned about the Human Resources Directorate's management even before Mr. Singh arrived, which is why they asked for a review. The Senate insisted that again, it was not Ms. Proulx's decision. For the Senate, this is another example of an explanation that there was no discrimination.

[508] The Senate also reviewed Mr. Singh's allegation about Ms. Proulx's interference with Ms. Vanikiotis's Interchange Canada assignment request. The Senate indicated that Mr. Singh informed Ms. Proulx about it; she then gave her perspective. According to the Senate, she never refused Ms. Vanikiotis's Interchange Canada assignment. Ms. Proulx was not opposed to it as long as the Senate's operational needs were met.

[509] The Senate submitted that Ms. Proulx wanted to ensure that the person who replaced Ms. Vanikiotis was the right fit. The Senate indicated that Ms. Proulx was concerned that the person that Mr. Singh proposed would not be right since that person did not qualify in a staffing process that was at a classification level lower than that of Ms. Vanikiotis.

[510] The Senate also argued that Mr. Patrice and Mr. Robert spoke to Ms. Vanikiotis while Ms. Proulx was busy with the Duffy trial (Exhibit G-2, tab 24). The Senate pointed out that the evidence showed that there were tensions between Ms. Vanikiotis and Mr. Singh, which might explain some of the frustration. Again, there is no evidence that Ms. Proulx went behind Mr. Singh's back to talk directly to his staff. In addition, this is also a very legitimate explanation for Mr. Singh's allegation (Exhibit G-2, tab 20).

[511] Addressing the subject of the Human Resources Directorate's reorganization following Mr. Nunan's secondment outside it, the Senate submitted that again, Mr. Singh presented the proposals to Ms. Proulx. She did not insert herself in the process; she gave her views after being asked for them. She had concerns because she thought that so many changes would bring instability.

[512] The Senate indicated that at that time, it was preparing for a round of collective bargaining and therefore needed stability. Moreover, the Human Resources Directorate was to undergo a functional review. So, the Senate argued, for Ms. Proulx, the timing was not right for the proposed substantive changes, especially since Mr. Nunan's secondment was not to be permanent (Exhibit G-2, tab 25, page 1). The Senate

maintained that Mr. Singh never responded to Ms. Proulx's questions and that at the same time, he became increasingly disrespectful.

[513] The Senate referred to the September 10, 2015, meeting as another example in which Ms. Proulx tried to explain her concerns about Mr. Singh's proposals, and his reaction was hostile; he was agitated (Exhibit G-2, tab 30, page 3).

[514] The Senate reiterated that Ms. Proulx never insisted that Ms. Blais, not Ms. Eynoux, replace Mr. Nunan. According to the Senate, Ms. Proulx simply said that normally, Ms. Blais acted as Mr. Nunan's replacement and that Ms. Blais was a better choice while the Senate was going through collective bargaining than Ms. Eynoux, who had just come on board. The Senate maintained that contrary to what Mr. Singh alleged, Ms. Proulx did not micromanage him. He consulted her, and she answered (Exhibit G-2, tab 31).

[515] The Senate insisted that there is no basis to claim that Ms. Proulx harassed Mr. Singh or that he was subjected to different treatment than were others. The Senate insisted that delegation of authority is not absolute; as the chief corporate services officer, ultimately, she was responsible. The Senate provided examples in which, in the context of the changes to the Human Resources Directorate, proposals dealing with managerial positions were not just in his line of authority, and Ms. Proulx, as the chief corporate services officer, had to be consulted (Exhibit G-1, tab 31, page 2). The same was true for proposals affecting the classification of a position or the organization's budget in that the chief corporate services officer had to be involved (Exhibit G-1, tab 31, page 3).

[516] Addressing the notice of intent to appoint that was an issue for Mr. Singh but not for Ms. Proulx and that resulted in different treatment for him, the Senate submitted that it was done following Ms. Vanikiotis's recommendation and that Mr. Patrice and Ms. Proulx decided to issue one for Mr. Singh's appointment. Ms. Vanikiotis sent her recommendation to Mr. Patrice and Ms. Proulx, who both agreed to it, without reviewing the relevant policy.

[517] The Senate argued that while no notice was issued for Ms. Proulx's appointment, it should be noted that she had no involvement in her appointment and that she was not made aware that one would not be issued. Mr. Pleau and the Steering Committee made that decision based on Mr. Singh's advice.

[518] The Senate argued that it was ironic that Mr. Singh raised it as evidence of differential treatment when he had advised the senators that there was no need for a notice to appoint Ms. Proulx. The Senate insisted that Mr. Singh had had plenty of time to raise it if it was an issue. He did not.

[519] Turning to the issue of the chief financial officer development program, the Senate acknowledged that Mr. Singh developed it. However, the Senate maintained that Ms. Proulx indicated that other staff should be involved only because the program had reached an administrative and technical stage. The Senate insisted that Ms. Proulx made her comments after Mr. Singh specifically asked for them (Exhibit G-2, tab 19, pages 2 and 3).

[520] As for Mr. Singh's argument that the selection board did not include a member of a visible minority group, the Senate pointed out that Mr. Singh never raised this issue or stated that he should have been part of the board. Moreover, it consisted of two women and someone external to the Senate, and one had a physical disability.

[521] Finally, the Senate dismissed Mr. Singh's argument that Ms. Proulx influenced the selection board. The Senate maintained that there is simply no evidence that she was involved. At the relevant time, she was busy with the Duffy trial and did not interfere in any way with the board members' unanimous conclusions. The Senate concluded that again, no evidence supports the allegation that Ms. Proulx was involved and that she intervened in the results.

[522] As for the chief financial officer staffing process, the Senate stated that it is another example of the evidence showing that the senators made the decision to appoint Ms. Legault as the new chief financial officer. Ms. Proulx had no involvement in the process. The Senate also pointed out that if anything, Ms. Legault's appointment shows that Mr. Singh, not Ms. Proulx, wanted to bend the rules by suggesting that in contravention of the relevant policy, Ms. Legault receive an additional week of vacation per year.

[523] As for the oral reprimand imposed on a director in Mr. Patrice's group after an employee made a harassment complaint, the Senate pointed out that the director reported to Mr. Patrice, not Ms. Proulx. Therefore, again, she was not involved.

[524] Moreover, the Senate argued that again, Mr. Singh suggested paying a lump sum to the employee who had been terminated for cause. The Senate pointed out that in Mr. Patrice's opinion, no payment was appropriate since the employment of the employee was terminated for cause.

[525] As to why the director in Mr. Patrice's sector received an oral reprimand, while Mr. Singh received a letter of reprimand, the Senate explained that for the director, it was a one-time incident of the director making an unwise comment. As for Mr. Singh, there were concerns about the Director of Human Resources drafting his letter of offer.

[526] The Senate also addressed the allegation that Ms. Proulx did not inform the Standing Committee's Subcommittee on the Senate Estimates that an employee had claimed a significant amount of overtime. The Senate argued that the evidence showed that no fraud was involved, and that Ms. Proulx testified that the subcommittee was aware of the issue. So, for the Senate, this is another example of a reasonable explanation in response to Mr. Singh's allegation that Ms. Proulx hid issues from the senators.

[527] The Senate also rejected Mr. Singh's allegation that Ms. Proulx said "these people" when referring to two senators who were not Caucasian. The Senate argued that he did not make that allegation in the November 24 email but that he brought it up for the first time at the hearing. The Senate referred me to Ms. Proulx's testimony, in which she denied making derogatory comments about the two senators; she might have said that senators have big egos. For the Senate, this allegation was never corroborated, and Ms. Proulx denied it.

[528] Addressing the issue of the main-estimate capsules, the Senate submitted that Mr. Singh insisted on presenting his two capsules despite Ms. Proulx clearly telling him not to. The Senate reviewed the evidence and argued that Ms. Proulx had explained to Mr. Singh why there was no need for the capsules (Exhibit G-2, tab 34, the last two pages). The Senate submitted that at the hearing, Mr. Singh tried to misinterpret what Ms. Proulx had said when he testified that "she never said not to send it".

[529] As for his statement that Ms. Proulx and Ms. Legault danced and held hands on their way to his office on the morning of November 16, 2015, the Senate argued that it was just an embellishment of the evidence. The Senate insisted that neither "holding

hands; nor dances” took place. The Senate pointed out that on that morning, Ms. Proulx had just returned to work following her father’s recent death.

[530] As for the main-estimates meeting in December 2015, the Senate argued that Mr. Singh was never prevented from answering senators’ questions; nor did Mr. Patrice touch him to stop him from answering. The Senate indicated that Mr. Patrice testified that he never prevented Mr. Singh from answering questions asked by the senators’ subcommittees. The Senate also pointed out Ms. Proulx’s testimony, in which she said that the Senate’s meetings are very formal and that if a question is asked, the person being asked must answer. She said that she never responded to the senators in Mr. Singh’s place.

c. The Senate investigated Mr. Singh’s allegations

[531] The Senate referred me to Senator Housakos, who said that on their face, the allegations were false. Mr. Singh blamed Ms. Proulx for decisions that the senators had made. According to the Senate, Mr. Singh no longer wanted to work with Ms. Proulx; the working relationship was no longer viable.

[532] The Senate pointed out that nevertheless, Senator Housakos was troubled by the racism allegation against Ms. Proulx. He decided to look into it and explained the process he followed. The Senate maintained that since the November 24 email was not a formal complaint under the harassment policy, there was no requirement to treat the allegations as such. Moreover, the Senate submitted, even if a formal complaint had been made, there is no obligation under that policy to carry out an extensive investigation (Exhibit G-1, tab 16, 4.5.1).

[533] The Senate also submitted that there is no free-standing duty to investigate in this case since the evidence clearly does not support Mr. Singh’s discrimination allegations; there was no violation of the law. Since those allegations have not been proven, the alleged absence of investigation cannot by itself be a discriminatory action.

[534] In support of his argument, the Senate referred me to *Stanger v. Canada Post Corporation*, 2017 CHRT 8 at paras. 213 and 214; *Walton Enterprises v. Lombardi*, 2013 ONSC 4218; and *Scaduto v. Insurance Search Bureau*, 2014 HRTO 250 at para. 75.

[535] The Senate also maintained that there are different degrees of investigations and that what matters is that a reasonable process takes place, as decided in *Stanger*, at 62.

[536] The Senate insisted that in this case, Senator Housakos, who is not a lawyer, reasonably took the time to inquire into Mr. Singh's discrimination allegation. Senator Housakos spoke to a dozen senators and managers. Even though they were all Caucasian, nevertheless, they all knew Ms. Proulx very well and attested that she had never demonstrated any behaviour based on racism. The Senate maintained it was important that the people that Senator Housakos spoke to all had experience with Ms. Proulx; they all concluded that they had never witnessed any behaviour tainted by racism on her part. The Senate pointed out that the Senator is the son of immigrants who testified to experiencing discrimination himself. He is sensitive to such issues.

[537] The Senate argued that Senator Housakos satisfied himself that there was no basis to a harassment or discrimination allegation. The process he followed was reasonable, even if one takes the position that a formal complaint was made, which was not the Senate's case. The Senate stated that after his discussions with other senators and some managers, Senator Housakos concluded that there was no basis to the allegations. Therefore, with his colleagues Senators Wells and Furey, he decided to terminate Mr. Singh's employment (Exhibit G-1, tab 3).

d. Why Mr. Singh was terminated

[538] The Senate referred me to Senator Housakos's testimony about why the Steering Committee decided to terminate Mr. Singh's employment. The Senate submitted that the reasons were related to the categorical position that Mr. Singh took in the November 24 email. The Senate argued that in essence, Mr. Singh wrote that he no longer wanted to work with Ms. Proulx, that he wanted to impose on the senators the Senate's administrative structure model, and that Ms. Proulx was not able to present human-resources information to the senators. Moreover, the Senate submitted, Mr. Singh was not prepared to discuss these issues.

[539] The Senate pointed out that senators considered Mr. Singh's categorical position as containing disagreements with decisions it had made. As Senator Housakos expressed, Mr. Singh drew a line in the sand, and his demands were not reasonable. Therefore, he could no longer continue to work for the Senate.

[540] For the Senate, the letter of termination clearly addressed the reasons for the termination of Mr. Singh's employment. The Senate indicated that it chose to terminate him without cause and that it offered him three months' pay in lieu of notice. The Senate submitted that unlike in other situations, no specific amount is provided in a termination without cause. However, under common law, the Senate had the choice of either giving Mr. Singh reasonable notice on termination or paying him in lieu of one. The Senate chose to pay him the three months of salary.

[541] The Senate stressed the fact that Mr. Singh was a Senate employee for less than a year as of the termination of his employment. Therefore, in the circumstances, three months of pay was reasonable. The Senate submitted that Mr. Singh accepted the pay only in July 2016.

e. The termination was not a reprisal

[542] The Senate argued that the termination of Mr. Singh's employment was an affirmation by the Senate that his employment was no longer viable. There is simply no evidence that the decision was a reprisal for the November 24 email. The Senate reiterated that Mr. Singh had the burden of proving that a human-rights allegation was a factor in the termination of his employment. Moreover, the Senate submitted that Mr. Singh's email was not a harassment complaint but rather a list of demands and unfounded allegations that he sent to Ms. Proulx, who was not even involved in the termination of his employment; see *Tabor v. Millbrook First Nation*, 2015 CHRT 18.

[543] Addressing the issue of statistical evidence that Mr. Singh raised, the Senate submitted that while in some cases, such evidence might be relevant to demonstrate discrimination, nevertheless, it is relevant only if it is related to the issues of a particular case. For the Senate, this type of evidence is often used when systemic discrimination is alleged, which is not so in this case. Systemic discrimination must be related to a specific issue; see *Abi-Mansour v. President of the Public Service Commission*, 2016 PSLREB 53 at para. 13.

[544] The Senate stated that at any rate, its diversity report for 2018 indicated an improvement in that the number of managers who were members of a visible minority group was higher than the workforce availability (Exhibit G-1, tab 10, page 6). While it admitted that Mr. Singh was the only visible minority at the executive level, the Senate

submitted that in itself, it is not proof of discrimination, and that visible minorities are well represented at the manager level.

f. The legal framework, and Mr. Singh is not entitled to his requested remedies

[545] The Senate pointed out that at the outset of the hearing, Mr. Singh indicated that he no longer challenged the Senate's position that it could terminate his employment on a without-cause basis.

[546] The Senate stated that while Mr. Singh could have filed a grievance against the termination, his employment relationship with the Senate was governed by the law of contracts under common law, which cannot be altered by the grievance process, as decided in *Dunsmuir*, at paras. 74 to 76, 95, and 96. The right to grieve gives only a forum to an employee; it does not change the common law. Therefore, there could be a right to grieve in the case of a termination without cause; see *Wells v. Newfoundland*, [1999] 3 S.C.R. 199.

[547] The Senate submitted that since Mr. Singh did not prove discrimination, the Senate was entitled to terminate his employment without cause by providing him with three months' salary in lieu of notice. The Senate referred me to *Honda Canada Inc. v. Keays*, 2008 SCC 39 at paras. 28, 50, and 56; *Dunsmuir*, at para. 108; and *Bardal v. Globe and Mail Ltd.*, [1960] O.J. No. 149 (QL), as to the factors to consider when deciding what constitutes a reasonable notice of termination. The Senate reiterated that in this case, three months of pay was reasonable, taking into account that Mr. Singh was a Senate employee for less than a year.

[548] As for Mr. Singh's requested damages, the Senate submitted that since there is no proof of discrimination, he is not entitled to any damages under the *CHRA*.

[549] Moreover, the Senate argued that alternatively, even if I conclude that discrimination occurred, s. 2 of the *PESRA* bars the relief contemplated under the *CHRA*, including that under s. 53, as was decided in *Canada (House of Commons)*, at para. 95. For the Senate, the enforcement mechanisms under the *CHRA* do not apply in this case.

[550] The Senate maintained that in a discrimination case, the remedies applicable are under the *PESRA* and the common law, and that they do not include reinstatement for breach of contract. The Senate referred me to *Dunsmuir*, at para. 108.

[551] Alternatively, the Senate submitted that even if I find that I have jurisdiction to award damages under s. 53 of the *CHRA*, reinstatement would not be appropriate, since the employment relationship has broken down completely. And while some of the parties involved might no longer be with the Senate, Senator Housakos is still there.

[552] The Senate also submitted that there is no evidence to support the allegation that the Senate acted recklessly or willfully. Therefore, there is no basis for damages under s. 53(3) of the *CHRA*, as decided in *Lafrenière v. Via Rail Canada Inc.*, 2019 CHRT 16 at paras. 28 and 162 to 165.

[553] Specifically, again, if I determine that discrimination occurred and that I have jurisdiction to award damages under s. 53 of the *CHRA*, the Senate argued that even then, Mr. Singh would not be entitled to damages for mental distress or for the tarnishing of his reputation. The Senate argued that damages for mental distress are available only in cases in which an employer acted in bad faith or unfairly, which did not happen in this case. The Senate referred me to *Honda Canada Inc.*, at paras. 28, 50, 56, and 57; and *Kurtz v. Carquest Canada Ltd.*, 2015 ONSC 7997 at paras. 109 to 117.

[554] As for the damage to Mr. Singh's reputation, the Senate stated that the facts in *Tipple PSLRB* and *Tipple FCA* differ from those in this case. In *Tipple PSLRB* and *Tipple FCA*, after telling Mr. Tipple not to talk to the media, the employer leaked information to it that it knew was false. In this case, the Senate never told Mr. Singh not to talk to the media. In fact, his counsel told the media that Mr. Singh had been terminated without cause. Moreover, the Senate did not speak with the media, did not publicly comment on Mr. Singh's conduct, and did not suggest that he had shown any improper behaviour. If anything, only one quote was made, by Senator Jaffer about Mr. Singh, and it was positive (Exhibit G-3, tab 3).

[555] Therefore, the Senate concluded that there is no evidence that Mr. Singh's reputation was damaged by wilful conduct of the Senate. Thus, he is not entitled to damages. With respect to his request for interest on the damages, the Senate submitted that there is no authority under the *PESRA* to award interest and referred me to *Matthews v. Canadian Security Intelligence Service*, PSSRB File No. 166-20-27336 (19990218), [1999] C.P.S.S.R.B. No. 31 (QL) at paras. 100 and 101.

C. Rebuttal

[556] Mr. Singh challenged the Senate's position that the *CHRA* applies to this case but that its remedies do not. Mr. Singh argued not only that he had the right to grieve the termination of his employment but also that he can rely on the remedies provided under s. 53 of the *CHRA*. Mr. Singh referred me to *Dunsmuir*, at para. 111.

[557] Mr. Singh also distinguished this case from *Canada (House of Commons)*, in which the dispute was about whether the matter should be brought to the Canadian Human Rights Commission. *Canada (House of Commons)* did not decide the remedies, and nothing in it states that there is no remedial authority under the *CHRA*. For Mr. Singh, s. 62 of the *PESRA* has to be interpreted as including the remedial redress in the *CHRA* (see *Canada (House of Commons)*, at paras. 86 to 88).

[558] Mr. Singh pointed out that in the November 24 email, he set out what happened over the year. However, Senator Housakos did not review the allegations; he carried out a very cursory review before dismissing discrimination out of hand. Mr. Singh indicated that under the circumstances, I will have to consider a large amount of evidence.

[559] For Mr. Singh, Senator Housakos made up his mind once he met Mr. Pleau and Mr. Patrice. He spoke to the two other senators only to have them approve the decision to terminate Mr. Singh's employment. Mr. Singh argued that his allegations were serious enough; they deserved to be investigated. He argued that were I to conclude that no harassment occurred based on his race, I could still find that discrimination occurred due to the simple facts that the allegations were not investigated, and that Mr. Singh's employment was terminated as a result.

[560] Addressing the issue of damages, Mr. Singh maintained that they can be awarded under the *CHRA*. While it is true that in *Tipple PSLRB* and *Tipple FCA*, the employee was gagged by his employer, Mr. Singh submitted that in this case, even though the Senate knew of the media leaks and rumours about Mr. Singh, it decided not to do anything about them. The Senate could have made a simple statement that Mr. Singh's employment had been terminated without cause, but it chose not to.

[561] While Mr. Singh said that he might have been sarcastic in some emails to Ms. Proulx, it might have been that he was just reacting to being treated unfairly because he was a visible minority.

[562] For Mr. Singh, the relationship between Mr. Singh and Ms. Proulx was not normal. While two executives can sometimes have robust discussions, in this case, Ms. Proulx went beyond that. She constantly overrode Mr. Singh, which was unacceptable. Mr. Singh also gave the example of the Executive Committee not consulting him when it made decisions about the Senate's new administrative structure. Mr. Singh argued that even the Speaker of the Senate was consulting Mr. Singh; why not the Executive Committee, if not to exclude him?

[563] Mr. Singh returned to other examples of differential adverse treatment, including the Canadian Association of Parliamentary Administration conference. In May 2015, Ms. Bouchard knew that she would attend, but Mr. Singh found out only in August. Another example was the issue of the directors' attendance at Standing Committee and Steering Committee meetings. Mr. Singh maintained that the Senate did not produce in evidence any documents confirming who attended those meetings after the February 4, 2015, email. Mr. Singh stated that there is oral evidence that others attended more often than Mr. Singh did, especially Ms. Bouchard.

[564] As for the fact that no notice of intent to appoint was issued for Ms. Proulx's appointment as the chief corporate services officer, Mr. Singh submitted that even though he was the director of human resources, he simply followed Mr. Patrice's instructions not to issue one.

[565] Mr. Singh objected to the proposition that Ms. Proulx could not have discriminated against Mr. Singh because she had hired him. Mr. Singh stated that hiring someone does not mean that the person who did the hiring will not discriminate against him or her.

[566] Addressing Ms. Proulx's credibility, Mr. Singh indicated that she was evasive and that he had trouble understanding her answers, which often were long. He submitted that that showed her communication style, so no wonder communication issues arose between them. Mr. Singh stated that Ms. Proulx's communication style is certainly not her forte.

[567] Mr. Singh insisted that the Senate had an obligation to investigate his allegations; it did not. It should not have terminated his employment; he complained and then was fired. He wondered about the kind of message it sent to the other employees. Moreover, the Senate continued to act unfairly by insisting that he waive his human rights before giving him the three months' salary. He was paid only in July 2016.

[568] For Mr. Singh, the Senate should be held to the highest standards. It cannot terminate employees' employment because they raise human-rights issues. Doing so was wrong.

V. Reasons

A. Termination of employment on notice or payment in lieu of notice

[569] Before getting into the evidence as to whether Mr. Singh was discriminated against or whether his race and colour were factors in the way he was treated, I first would like to address the issue of the Senate's position that it could terminate his employment on notice or payment in lieu of notice. In the letter of termination, the Senate indicated that it terminated Mr. Singh's employment without cause, and in lieu of notice, it offered him three months' salary.

[570] As mentioned earlier in this decision, at the outset of the hearing before me, Mr. Singh indicated that he did not challenge that the Senate had the right to terminate his employment on notice or payment in lieu of notice. Mr. Singh indicated that he was waiving his rights with respect to challenging that right. Therefore, no discussion took place on that issue.

[571] Mr. Singh stated that he wanted to focus on the *CHRA*, which, he argued, not only prohibits discrimination but also provides remedies such as damages and reinstatement.

[572] For its part, the Senate essentially maintained that it had the right to dismiss Mr. Singh on notice or payment in lieu of notice. The Senate referred me to *Wells* and *Dunsmuir*.

[573] While the issue as to whether the Senate was entitled to terminate Mr. Singh's employment on notice or payment in lieu of notice may be the subject of an interesting legal discussion, since Mr. Singh decided not to challenge the Senate's position, in the

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

absence of a discussion, I will not pronounce on the issue. Therefore, this decision will be based on whether he was discriminated as per the *CHRA* and if so, determining the applicable remedies.

B. Whether Mr. Singh's *CHRA* rights were infringed and if so, the appropriate remedies

[574] Mr. Singh argued that he was subject to these three distinct acts of discrimination:

- 1) differential treatment and harassment of him by Ms. Proulx and the Senate, contrary to ss. 7 and 14 of the *CHRA*;
- 2) failure to investigate the racial discrimination allegations, contrary to ss. 7 and 10 of the *CHRA*; and
- 3) termination of employment for raising the racial discrimination allegations, contrary to ss. 7 and 14 of the *CHRA*.

1. Differential treatment and harassment of Mr. Singh by Ms. Proulx and the Senate, contrary to ss. 7 and 14 of the *CHRA*

[575] As noted earlier in this decision, a great deal of the evidence was about events and issues involving Mr. Singh and Ms. Proulx in which they clearly had profound misunderstandings or disagreements about their work and reporting relationship. I must say that it is very sad that this situation degenerated to the point that the Senate decided to terminate Mr. Singh's employment and that no one took action before things clearly got out of hand.

[576] The jurisprudence is consistent that to show discrimination, the person who alleges differential adverse treatment must first demonstrate that there is a *prima facie* case of discrimination. The applicable test to establish that case is stated as follows in the Supreme Court of Canada's decision in *Moore*, at para. 33:

[33] As the Tribunal properly recognized, to demonstrate prima facie discrimination, complainants are required to show that they have a characteristic protected from discrimination under the Code; that they experienced an adverse impact with respect to the service; and that the protected characteristic was a factor in the adverse impact. Once a prima facie case has been established, the burden shifts to the respondent to justify the conduct or the practice, within the framework of the exemptions available under human rights statutes. If it cannot be justified, discrimination will be found to occur.

[577] In *Nelson*, at para. 32, the Human Rights Tribunal of Ontario wrote this:

[32] I accept that the legal test for establishing a prima facie case of discrimination is set out by the Supreme Court of Canada in [Ont. Human Rights Comm. v. Simpsons-Sears, [1985] 2 SCR 536]. In O'Malley, at paragraph [28], the Supreme Court of Canada held that a prima facie case 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 favor in the absence of an answer from the respondent-employer".

[578] In this case, there is no dispute that Mr. Singh's race and colour are characteristics protected under the *CHRA* and that he experienced an adverse impact when his employment was terminated. The only issue at play in this matter is whether his race and colour were factors in the Senate's decision to terminate his employment.

[579] After going over each of Mr. Singh's allegations against Ms. Proulx, I am satisfied that he did not meet the burden of demonstrating a *prima facie* case of discrimination with respect to the termination of his employment. On the other hand, for each allegation, a reasonable justification was provided.

[580] While it is indisputable that Mr. Singh and Ms. Proulx had serious conflicts and that their working relationship was acrimonious, I am not convinced that Mr. Singh's race and colour were factors in any of the unfortunate situations, regardless of whether the alleged bias was conscious. I should also point out that except perhaps for the allegation that the Senate decided to retaliate against Mr. Singh, the allegations were made against Ms. Proulx. In the November 24 email, Mr. Singh indicated that he did not feel that the other Executive Committee members treated him differently than they did his colleagues (Exhibit G-1, tab 1, page 2).

[581] Before addressing these specific allegations, I think it is important to point out some overarching conclusions I reached after considering the evidence and carefully reviewing the parties' correspondence and arguments.

[582] I would also like to point out that while later in this decision, I will review essentially all the specifics of the allegations against Ms. Proulx, I am mindful that while discrimination can be drawn from just one incident, it must be kept in mind that it is also important to consider all the events as a constellation or a pattern that when

combined, can lead to the conclusion that they were racially motivated. As decided as follows in *Turner*, at para. 48:

[48] A complainant is not required to prove that the respondent intended to discriminate in order to establish a prima facie case as some discrimination involves multiple factors and is unconscious. Indeed, it is often said that discrimination is not a practice that would ordinarily be displayed openly or even practiced [sic] intentionally. As a result, the Tribunal must examine all of the circumstances, invariably often involving circumstantial evidence, that both support and undermine the allegation of discrimination, to determine if there exists what the Tribunal has called the “subtle scent of discrimination”....

[583] In my view, it is very important to understand and to keep in mind the context in which this conflict started to develop when exploring how the situation evolved and ended with the termination of Mr. Singh’s employment. I believe that a careful look at the early stage of his working relationship with Ms. Proulx will explain some of the actions and reactions.

[584] Both admitted that at the very beginning of the working relationship, when Mr. Singh and Ms. Proulx were colleagues reporting to Mr. O’Brien, they had a positive relationship. Things were fine; there was no hint of harassment of any sort or of discrimination.

[585] While discrimination has no barriers, it also is not static in the sense that sometimes, events or situations shed new lights on people. In other words, it is certainly possible that a person who had a fine working relationship with a colleague can become abusive or act in a discriminatory manner when he or she begins supervising employees. It is also possible for the new manager and employee to have a hard time adjusting to the new reporting relationship, even if race or ethnic background is not a factor in the new environment.

[586] Clearly, in this case, things began to deteriorate a month or so after Mr. O’Brien departed and changes to the Senate’s administrative structure were established in January 2015. On that point, Mr. Singh complained that he should have been part of the initial discussion of the three members of the Executive Committee about how the new structure would work. Ms. Proulx explained that since it was a new structure, she and her two colleagues wanted first to have a feel for it and to discuss in broad terms how things and responsibilities would unfold.

[587] In my view, doing so was perfectly normal. The senators had just mandated the Executive Committee to manage the day-to-day life of the Senate. Among the three of them, they had extensive Senate experience. It made perfect sense that they first discussed how things would work before involving Mr. Singh. That is how organizations work, and there is no evidence that Mr. Singh's race and colour were factors in that decision.

[588] The first illustration of the impact of these changes could be observed as early as February 4, 2015, with the Senate's decision to no longer allow directors to attend their meetings. Then appeared the early signs of Mr. Singh's dissatisfaction and frustration with the new administrative structure and with Ms. Proulx's management style.

[589] While in my mind, there is no question that racism and discrimination exist in all kinds of workplaces in Canada, it is important not to confuse them with disagreements, even major ones, between a supervisor and his or her employee. I am convinced that the heart of the problem is the fact that from the outset, Mr. Singh never accepted the changes to the reporting relationship, let alone Ms. Proulx's hands-on management style. The refusal to accept that new relationship degenerated to the point that the working relationship was definitively broken.

[590] Mr. Singh's belief that he was discriminated against because of race and colour is not enough to conclude that there is a *prima facie* case of discrimination. Such a case needs evidentiary support that race and colour were factors in the alleged discriminatory conduct, which it does not have in this matter. As decided as follows in *Filgueira FC*, at para. 30, quoting *Filgueira v. Garfield Container Transport Inc.*, 2005 CHRT 32 at para. 41:

41. The question that I am left with is this: if an employee believes that someone in an ethnic group is doing the same job, and receiving a higher wage, is that enough to establish a prima facie case of discrimination? I think there must be something more. There must be something in the evidence, independent of the Complainant's beliefs, which confirms his suspicions. I am not saying that a Complainant's beliefs do not have evidentiary weight. It depends on the circumstances. But an abstract belief that a person is discriminated against, without some fact to confirm that belief, is not enough.

[591] While for some, Ms. Proulx's management style may be questionable in some situations, one must keep in mind that sometimes, a manager's decisions are debatable from an employee's point of view. That is part of the working relationship between a supervisor and his or her employee. Most of the time, the supervisor and his or her employee can find a way to make it work.

[592] While disaccords between managers and employees are not uncommon, some organizations and their people are better at addressing them in a healthy way; some are not. Clearly, the parties to this case were not better at it in that each one stood its ground. While certainly, it was not a sign of a healthy workplace, and surely, steps should have been taken to address the situation, it does not necessarily mean that Mr. Singh's race and colour were factors in the acrimonious working relationship.

[593] Mr. Singh's allegations refer to specific infringements under the *CHRA*, which are the substance of this case. They were not about Ms. Proulx's managerial abilities, unless there is evidence that Mr. Singh's race and colour were factors in her management style and approach toward him. This case is not about who was best qualified on human-resources issues and who was the best person to discuss them with the Standing Committee and the Steering Committee. As Mr. Patrice said, Ms. Proulx's management style is a matter of perspective. What is not a matter of perspective is whether Mr. Singh's race and colour were factors in how she dealt with him. As I said, the evidence does not support that allegation.

[594] The evidence clearly showed that both Mr. Singh and Ms. Proulx were at the senior-management level and that they were very able executives who did not appear to feel intimidated by each other; they clearly had a power struggle.

[595] The micromanagement issue is omnipresent. Mr. Singh's race and colour could have been factors, but not necessarily. Micromanagement was mentioned regularly in Mr. Singh's emails or during meetings with Ms. Proulx and sometimes with the Executive Committee (Exhibit G-2, tabs 20; 21; 25, pages 1 and 2; 29, page 3; and 30, page 2).

[596] Another early sign that Mr. Singh did not accept Ms. Proulx's authority is his February 17, 2015, email to her about the leave approval for Ms. Vanikiotis. While there might have been some misunderstanding about Ms. Proulx's communication,

nevertheless, the tone of his email (Exhibit G-2, tab 15) is very confrontational, as follows:

Nicole,

I think you are right, we need to discuss. I respectfully, 100% disagree with your note below.

This is exactly contrary to what we discussed yesterday.

I would also like to request, that if any of my employee [sic] come to talk to you, that you redirect them back to me for my attention unless this is an issue you need to intervene in. I believe that this is the agreement that you have with your colleagues. Please do not misunderstand me, as I know you are responsible for HR but I have enough of my people going to senior management when they are not happy with a decision.

I am not happy with every decision either, but live with them and they need to do the same.

Thank you

Darshan

[597] Mr. Singh was not happy with Ms. Proulx and let her know about it in a very direct way. At this point, I should also mention that while he repeatedly accused her of contacting his employees directly, except for the evidence that she talked to Ms. Blais about replacing Mr. Nunan, which will be discussed later in this decision, this allegation was simply not substantiated.

[598] As examples of Ms. Proulx's alleged discriminatory behaviour, Mr. Singh referred to several incidents, situations, and decisions that occurred over roughly the year he worked under her supervision. These allegations were mostly contained in the November 24 email and are detailed under the headings that follow.

a. Ms. Proulx's involvement in human-resources matters

[599] It is not in dispute that delegation does not mean that the person who delegates loses his or her authority. In this case, Ms. Proulx remained the ultimate authority before the Senate for matters like human resources. Mr. Singh admitted to that at the hearing. I do not think she could or should have abstained from becoming involved in human-resources matters since ultimately, she was accountable to the committees as the chief corporate services officer.

[600] And as the delegation of authority table shows, Ms. Proulx had to be involved in matters that dealt with the appointments of managers or for staffing actions that were for periods of longer than six months. An example is the replacement for Mr. Nunan, which could have been for nine months. Also, when a staffing action affected classification and the budget, the chief corporate services officer had to be consulted (Exhibit G-1, tab 17, pages 2 and 3).

[601] There is no evidence that Ms. Proulx had undue involvement in human-resources matters or that Mr. Singh's race and colour were factors in her involvement. In addition to the fact that according to the delegation authorities, she had to be involved, often, Mr. Singh sought her input on matters such as the proposed changes to the Human Resources Directorate, for example in this June 19, 2015, email (Exhibit G-2, tab 25, page 2):

Bonjour Nicole,

Here are the proposed changes and the draft org. chart for your comments.

Also, according to the delegation of authorities' matrix, these proposed changes are within my authorities as there are no indeterminate appointments or assignments greater than 6 months, no reclassifications, etc. Though I share them with you out of respect, I fully expect to be able to follow the words of the Speaker which are let managers manage.

Merci

Darshan

[602] Ms. Proulx forwarded that email to her colleagues, Mr. Patrice and Mr. Robert. She added, "Grrr" (Exhibit G-7).

[603] Ms. Proulx's explanation at the hearing that the "Grrr" was simply a sigh because there were discrepancies about the length of Mr. Nunan's assignment does not convince me. Instead, I think that she was rather exasperated by Mr. Singh's insistence and by the tone of his emails, which she wanted to share with her colleagues, Mr. Patrice and Mr. Robert. Of course, all this did not help create a healthy workplace relationship. While it was clearly an expression of frustration on her part, I just cannot find it more probable than not that in such circumstances, Mr. Singh's race and colour were factors in the frustration that she felt. Many managers would

have felt undermined by such an email and would have reacted similarly without race being a factor.

[604] Further, Ms. Proulx explained that part of the problem was that Mr. Singh often notified her of what he intended to do, but at the same time, he did not want her to comment or to disagree with him. She indicated that this put her in a difficult position. I agree. I do not think it was fair of him to inform her of his proposals but at the same time to tell her not to become involved, especially since she was ultimately responsible to the Senate and was being made aware of plans and situations. In my view, she could not be asked to not comment or react when he informed her of significant issues, like organizational changes. This context confirms my finding in the previous paragraph that Mr. Singh's race and colour were not factors in Ms. Proulx's actions, whether consciously or not.

[605] I should also point out that Mr. Singh followed that approach again in the November 24 email when after raising his substantial allegations, he told her that he did "not need to discuss it" and that he did "not require a response" (Exhibit G-1, tab 1. page 3).

[606] I must also add that it is common knowledge that in any organization, it is very normal and even appropriate for a director to discuss with his or her superior changes to be made to the organization. As was heard in the testimonies, the proposed changes to the Human Resources Directorate were part of an ongoing discussion between Mr. Singh and Ms. Proulx. It started in June 2015 and continued until November (Exhibit G-2, tabs 24, 25, 26, 28 to 31, and 33).

[607] Considering Mr. Singh's proposed changes to the Human Resources Directorate, it was normal that he would raise them with Ms. Proulx. In my view, the issue is not so much that he had to consult her; in fact, he did ask for her comments. It is that she did not agree with his proposed changes (Exhibit G-2, tab 24, page 3). As I just stated, in all fairness, someone cannot be notified about an initiative that falls under his or her authority and then be told that he or she is not entitled to discuss further or disagree with it. It goes both ways. Again, I certainly do not see anything inappropriate or out of the ordinary in her decisions, which were reasonable. I simply cannot draw the inference that Mr. Singh's race and colour were factors in her actions. Moreover, there

is no indication whatsoever that she acted differently from how she acted when other directorates in her sector were involved. This is another unsubstantiated allegation.

[608] Ms. Proulx's explanation was that she thought that significant changes were proposed in response to Mr. Nunan's secondment. Moreover, she explained that the Human Resources Directorate functional review was to take place. This confirms my finding in the previous paragraph that Mr. Singh's race and colour were not factors in Ms. Proulx's decisions.

[609] On June 17, 2015, Mr. Singh forwarded his proposed changes to the Human Resources Directorate to Ms. Proulx. On June 21, she responded, stating essentially that she was not comfortable with the changes and that she wanted to discuss the next steps. She also stated that "... HR has to be purer than pure in its HR activities ..."
(Exhibit G-2, tab 24, page 1, and tab 25, page 1). The same day, Mr. Singh replied, "I am sorry Nicole, but this is the definition of micro managing [*sic*]. I cannot continue and I am going to bring this to another level" (Exhibit G-2, tab 25, page 1).

[610] After being told that he would be invited to the Executive Committee meeting, Mr. Singh replied with the following on June 23, 2015 (Exhibit G-2, tab 25, page 1):

You are of course, free to do as you wish and given how rarely HR is invited to speak to the Executive Committee, it will be a novelty.

For clarity purposes, however, and for the record, you are wrong on the next level. As per our policy:

"where a complaint is about the conduct of the Clerk, the Director of Human Resources shall so advise the Chair and Deputy Chair of the [Standing Committee] and shall thereafter take instructions relating to the complainant from the Chair and deputy Chair to the exclusion of the Clerk".

...

When you forward this you can tell him that he can come and visit me at any time to discuss. I am just down the hall.

Darshan

[611] As for that last sentence, the evidence showed that Mr. Singh was referring to Mr. Patrice.

[612] The evidence also demonstrated that effectively, the Executive Committee met with Mr. Singh shortly after that, for which he had made notes in preparation. In his testimony, he could not explain what he meant in his notes by, "When you are always

defending, a strategy that can be used is to attack! I can't wait for the mgt [sic] retreat" (Exhibit G-2, tab 26).

[613] In his argument, Mr. Singh admitted that the tone of some of his emails could be perceived as sarcastic, but he was being treated unfairly and was a visible minority, so he had no choice but to react.

[614] I do not agree. Mr. Singh's emails of June 21 and 23, 2015, are examples of his sarcastic answers to Ms. Proulx's inquiries. While I do understand that he was not pleased with the answers he had received, it was not an excuse for his tone. It lacked respect toward his supervisor. Never during these episodes did he raise the issue that he felt singled out or discriminated against because of his race and colour. Rather, he took a more confrontational approach with her.

[615] While I disagree with Mr. Singh's approach since after all, he was the director of human resources, I certainly do not condone Ms. Proulx's reactions. Just as he did, she claimed to be well-versed and qualified in human-resources matters; therefore, she was no doubt familiar with the tools and resources available to help in a conflict situation such as theirs. While I think that it was also her responsibility to ask for professional help, I still cannot find any trace that Mr. Singh's race and colour were factors in her actions.

[616] Mr. Singh testified that he felt that Ms. Proulx's comment that the Human Resources Directorate **had to be purer than pure** was directed against him personally and that his ethics were still being questioned, since it happened shortly after he received the letter of reprimand. I cannot conclude that his race and colour were factors in her comment. Further, I understand from Ms. Proulx's testimony that the comment to mean that the Human Resources Directorate was to be very prudent in its internal handling of human-resources matters and that her comment was not directed at him, personally.

[617] While Mr. Singh might have felt frustrated, is there evidence that Mr. Singh's race and colour were factors in her general interactions with him? Again, I cannot draw that conclusion, although the evidence showed clearly that they disagreed on a number of issues and that the tone of their exchanges became increasingly negative as of June 2015.

[618] As I said, Ms. Proulx had the right to respond to his requests; she had the right to disagree with him, unless her motives were improper. It is not enough to claim that Mr. Singh's race and colour were factors in her behaviour and actions. Such an affirmation must be supported by evidence. That was not the case at the hearing.

[619] Examining the specific allegation that Ms. Proulx preferred Ms. Blais instead of Ms. Eynoux, who is part of a visible minority group, as a replacement for Mr. Nunan, I was presented with no evidence that race and colour, whether those of Mr. Singh or Ms. Eynoux, were factors in Ms. Proulx's decision. Mr. Singh did not make a *prima facie* case of discrimination in that respect. However, I am satisfied that in the past, Ms. Blais had always replaced Mr. Nunan, and that while Ms. Blais was classified lower than was Ms. Eynoux, she had experience in collective bargaining, which was about to start at the Senate. Moreover, the evidence is that Ms. Blais had recently qualified for a position at the same level as the one held by Mr. Nunan.

[620] Further, Ms. Eynoux had less Senate experience and had just been appointed to a support position for the senators, which Ms. Proulx did not want to disturb, especially since Mr. Nunan would be away temporarily. This confirms my finding in the previous paragraphs that Mr. Singh's race and colour were not factors in her decision, consciously or not.

[621] Before closing this segment, I will also point out that Ms. Eynoux was not called as a witness by Mr. Singh. Moreover, except for his allegation that Ms. Proulx wanted to assign Ms. Blais to the position because they were friends, there is simply no evidence of it. Ms. Proulx indicated that she knew Ms. Blais from previous assignments but that they were not friends. Ms. Proulx's affirmation was not contradicted.

[622] Mr. Singh also alleged that Ms. Proulx contacted his employees directly, without his knowledge. He presented no evidence to support a finding of a *prima facie* case that his race and colour were factors in her behaviour. On the other hand, the evidence is that all the briefing notes that went to the senators came from the offices of the directors involved. In the Human Resources Directorate's case, this means Mr. Singh's office. So, one has to conclude that no briefing notes went out without Mr. Singh seeing them first, unless he was away. Moreover, except for some work that Ms. Vanikiotis did openly on some special files, like recruiting a director of human resources, there is not a shred of evidence that Ms. Proulx dealt directly with Mr. Singh's employees behind

his back. Again, no one from the Human Resources Directorate was called by Mr. Singh as a witness to substantiate his allegation.

[623] One example that Mr. Singh provided to illustrate Ms. Proulx's micromanagement style was that she became involved in Ms. Vanikiotis's Interchange Canada assignment plan (Exhibit G-2, tab 20). Again, I was presented with no evidence supporting a *prima facie* finding that Mr. Singh's race and colour were factors in that respect. I note that throughout the hearing, Ms. Vanikiotis's name, as a manager, was cited as an important Human Resources Directorate resource person. For me, the fact that not only Ms. Proulx but also Mr. Patrice and Mr. Robert wanted her to stay in the organization and therefore talked to her to convince her to stay was nothing out of the ordinary in a given organization. Often, senior people will weigh in, to convince a valued employee to stay. In this case, the correspondence shows that Mr. Singh brought the issue to Ms. Proulx, who mentioned it to her two colleagues, who in turn indicated that they wanted to be part of the discussion and decision (Exhibit G-2, tab 20).

[624] Can a manager be offended by that? Maybe, depending on the manager's reporting relationship with the supervisor. However, the issue in this case is not whether a manager is happy with his or her supervisors becoming involved in a management situation. I believe that in an organization that is relatively small in terms of employees, like the Senate, especially when the players have been around for many years, such discussions and encounters happen.

[625] However, does that mean that Mr. Singh's race and colour were factors in Ms. Proulx's handling of the issue and the desire of Mr. Patrice and Mr. Robert to approach Ms. Vanikiotis? I found at paragraph 623 of this decision that Mr. Singh did not make a *prima facie* case in that respect. Furthermore, in this case, Mr. Patrice testified that there were tensions between Ms. Vanikiotis and Mr. Singh, which explains why he and Mr. Robert wanted to talk to Ms. Vanikiotis.

[626] Mr. Singh alleged that he was no longer allowed to attend Standing Committee and Steering Committee meetings but other directors were allowed to attend. I should point out that for this allegation, Mr. Singh always maintained that the decision that was communicated by email on February 4, 2015, to all directors was made by Ms. Proulx and that it was more proof of discrimination against him since he could no

longer attend the meetings, while other directors continued to attend them. However, he presented no evidence to support his claim that his race and colour were factors in such a decision by Ms. Proulx, and as a consequence, this claim was not established on a *prima facie* basis.

[627] To the contrary, the evidence from all the Senate's witnesses was unanimous that the committees made that decision. Basically, they were worried about leaks and wasting the directors' time. The evidence was also unanimous that all the directors were informed of those reasons; they all knew them.

[628] As stated, in my view, the Senate's decision to exclude the directors was the point at which the working relationship between Mr. Singh and Ms. Proulx began going downhill. In February 2015, the new administrative structure had just been put in place. Up to then, Mr. Singh had attended all Standing Committee and Steering Committee meetings *ex officio* with his colleagues Mr. Robert, Mr. Patrice, and Ms. Proulx.

[629] Mr. Singh never accepted that decision and felt pushed aside by it. He accused Ms. Proulx of making it, despite the facts that she clearly did not and that the reasons behind it had been explained to him. Again, Mr. Patrice, Mr. Pleau, and Senator Housakos all testified that everyone knew that the senators had made the decision and the reasons for it. For Mr. Singh, it was a new reality; he no longer had the autonomy and the access he had enjoyed under Mr. O'Brien. He now had to go through Ms. Proulx, which he never accepted.

[630] Mr. Singh felt excluded, for which he wrongly blamed Ms. Proulx. The evidence is that he continued to raise it with her. He raised it again at an Executive Committee meeting, at which he said that since he was no longer attending, the Human Resources Directorate was no longer represented, and that "Nicole is not an expert in Human Resources — not qualified to make decisions on HR" (Exhibit G-2, tab 29).

[631] Mr. Singh essentially repeated the same allegation in the November 24 email, as follows, in which he told Ms. Proulx that basically, she was not authorized to discuss human-resources matters with the Standing Committee and the Steering Committee and that she would have to make it clear that she did not speak on the Human Resources Directorate's behalf (Exhibit G-1, tab 1, page 2):

...

I also want it to be noted that on many matters relating to HR, I am not consulted by the Executive Committee prior to a decision being made. When you and the committee speak to management, and tell them that you are about to make a change, it implies that I have been consulted. I would ask that you clearly state to those in attendance that this is a decision of the Executive Committee and that neither I nor my team were [sic] involved. This has happened on numerous occasions such as when the new leadership structure was presented or the IIA poster was issued.

...

[632] At the hearing, Mr. Singh insisted that the minutes of the senators' decision to exclude directors from the meetings should have been made available to him.

[633] As for Mr. Singh's comments about Ms. Proulx's human-resources qualifications, I will state only that of course, they were completely disrespectful and inappropriate, but more importantly, again, they showed that Mr. Singh simply refused to respect her authority and that he even blamed her for a decision that he must have known she did not make. His sentiment that she was not qualified in human-resources matters and that she had no business involving herself in human-resources issues, despite the fact that she was ultimately responsible for them, never disappeared; it was there to the end. He simply refused any involvement and authority from her.

[634] As for the argument of Mr. Singh that Ms. Proulx should have provided access to the Senate's minutes confirming the decision, I see it as a subsidiary argument following the clear evidence that she did not make that decision. The evidence clearly showed that everyone knew the reasons behind the decision. In my view, this is more proof that Mr. Singh was not prepared to accept anything coming from Ms. Proulx. He continued to insist on it and raised the matter with her despite having been told the reasons behind the decision.

[635] As for Mr. Singh's affirmation that other directors continued to attend those meetings after the February 4, 2015 email, again, it was not corroborated (Exhibit G-2, tab 14). Mr. Singh called no witness to substantiate a *prima facie* finding of differential treatment by Ms. Proulx, whether or not his race and colour were factors. On the other hand, Ms. Proulx explained that attendance at the Senate's meetings was very formal and that the senators regulated it. She indicated that other directors, like Mr. Duguay, Director General of Parliamentary Precinct Services, might have been invited because

security was a very important issue at the Senate following the October 2014 shooting incident on Parliament Hill. She also indicated that Ms. Bouchard, who was responsible for the Information Services Directorate, might also have appeared because of the technical aspect of her work but only when she was needed.

[636] In their testimonies, both Mr. Pleau and Mr. Patrice also said that if anything, keeping in mind that the Senate held very few meetings from June 2015 to 2016 because of the summer and the election, Mr. Singh was still the director who attended the most of them. For his part, Senator Housakos said that during his tenure as the leader of the Senate, human resources was not a “hot topic” at the Senate. All this confirms my finding at paragraph 626 of this decision that the decision to limit Mr. Singh’s attendance at the committees’ meetings was not made by Ms. Proulx. Also, Mr. Singh presented no shred of evidence that his race and colour were factors in that decision.

b. Notices of intent to appoint

[637] In his testimony and in the November 24 email, Mr. Singh raised that his appointment was subject to a notice of intent to appoint at the SEG-02 group and level, while that did not occur for Ms. Proulx when she was appointed Chief Corporate Services Officer at the EX-05 group and level. He stated that this was another example of differential treatment and that it supported his discrimination claim.

[638] It is true that in this case, the notice of intent was issued after Mr. Singh had resigned from the public service. Thus, it became problematic when a grievance was filed against his appointment. It is also true that in Ms. Proulx’s case, no notice was issued.

[639] At the hearing, the parties argued about whether there was a need to issue such a notice in Mr. Singh’s case. Ms. Proulx maintained that one was correctly issued with respect to his appointment but added that one should also have been issued with respect to hers.

[640] I will not address whether the notice should have been issued in Mr. Singh’s case since there is simply no indication that Mr. Singh’s race and colour were factors in the decision to issue one. However, I must admit that it is unfortunate that the notice, if it was needed, was issued after Mr. Singh resigned from the public service. I can certainly

understand that it caused him some grief when he found out that a grievance had been filed against his appointment after he had already resigned.

[641] Similarly, I need not address whether a notice should have been issued in Ms. Proulx's case, since Mr. Singh provided no evidence that his race and colour were factors in that decision. However, Mr. Singh testified that he did not issue a notice with respect to Ms. Proulx's appointment because Mr. Patrice did not want to give an employee a chance to grieve her appointment. In his testimony, Mr. Patrice categorically denied it. He was adamant that he never asked Mr. Singh not to issue a notice of appointment for Ms. Proulx. I must say that on the balance of probabilities, I accept Mr. Patrice's version of the event. Throughout his testimony, Mr. Patrice appeared very solid and credible in his answers.

[642] Further, Mr. Singh was the director of human resources when the time came to issue the notice for Ms. Proulx's appointment. He did not issue one.

c. The chief financial officer development program

[643] Mr. Singh alleged that the establishment of the chief financial officer development program was another example of Ms. Proulx's micromanagement and discrimination and of her trying to belittle him. I should point out that he first went to her for comments on the program and the details of its process as shown in his April 8, 2015, email (Exhibit G-2, tab 19, pages 2 and 3).

[644] As for the fact that Ms. Proulx suggested to Mr. Singh that two of his staff take over the more technical part of the work, while I agree that perhaps she did not have to be involved, I accept that first, he asked for her comments, and that since she had been the last chief financial officer, she kept an interest in her former position. Again, while there was no need for her to suggest that two of his staff take over, I do not see this as evidence that she wanted to push Mr. Singh aside and that his race and colour were factors in her thinking.

[645] As for the fact that there was no member of a visible minority group on the selection board, while it comprised two women and a man, and one had disabilities, there is no doubt in my mind that efforts should have been made to include someone from a visible minority group. After all, two applicants were from visible minority groups. That being said, again, I cannot conclude that Mr. Singh's race and colour were

factors in Ms. Proulx's decision. While she could have tried to include a visible minority on the board, I note that in his cross-examination, Mr. Singh, the director of human resources involved in the matter, agreed that at the relevant time, he never raised the issue that the selection board had no visible-minority member. He appeared satisfied with the selection board's composition (Exhibit G-2, tab 19, the emails of April 20, 2015). When he was asked about his involvement in the process, he responded that he only signed and confirmed that the staffing file was complete. As the director of human resources, he never raised the issue with Ms. Proulx.

[646] Mr. Singh also alleged that Ms. Proulx was responsible for the unsuccessful outcome of the chief financial officer development process, and particularly, for the fact that two visible-minority candidates who applied to the process, among others, were not selected. Mr. Singh alleged that this was another example of race and colour as factors in Ms. Proulx's actions. However, he submitted no evidence that she inserted herself in the decision-making process of the selection board or that she overrode its decision. His allegation was not established on a *prima facie* basis.

[647] To the contrary, the undisputed evidence is that at the time, Ms. Proulx was involved in the Duffy trial and was not in any way involved in the selection board's unanimous decision to not select any candidate.

d. The Senate's compensation study

[648] According to Mr. Singh, the compensation study was another example of Ms. Proulx involving herself in areas under his responsibility. Mr. Singh alleged that she reviewed all the letters, which caused delays and exacerbated his staff's feelings. This, in itself, is insufficient to support a *prima facie* case that his race and colour were factors in Ms. Proulx's behaviour.

[649] On the other hand, Ms. Proulx maintained that she reviewed only the categories of the letters. She admitted to becoming involved, which she explained by referring to the sensitive nature of the file and to the risk that if it went wrong, the senators would react strongly.

[650] Ms. Proulx testified that the study was extremely important to the senators since it involved their staff. She explained that when their staff have compensation issues, senators are quick to react and demand an explanation. She testified that she

would have worked day and night if it would have made a difference to avoiding any crisis about the compensation issue.

[651] Again, this is a situation in which given the nature of the file, the manager who was most responsible decided to become involved. Ms. Proulx testified that in the past, a similar review, while not under her responsibility, ended up being a disaster. In 2015, as the chief corporate services officer, she did not want things to go wrong under her watch.

[652] This confirms my finding at paragraph 648 of this decision that Mr. Singh did not make a *prima facie* case in support of his allegation. Again, I fail to see anything out of the ordinary. While other chief corporate services officers might have been more or less involved, and while I understand that a director might not appreciate the involvement of his or her supervisor, I still think that it was legitimate for Ms. Proulx to become involved. The stakes were high with the senators, and she wanted to succeed. After all, she was ultimately responsible.

[653] Again, for me, this is a classic example of profound disagreement between a director and his superior. I note that Mr. Singh was frustrated about the situation.

[654] This episode and the others between Mr. Singh and Ms. Proulx all illustrate a profound lack of understanding and communication. Both stood their ground and refused to compromise, which was certainly unfortunate.

e. Proposed changes to the Human Resources Directorate

[655] The need for a Human Resources Directorate functional review was another example that Mr. Singh cited as a situation in which Ms. Proulx tried to control his directorate and push him aside. He explained that in his view, there was no need for such a review in the Human Resources Directorate, and that her old directorate, handling finance and procurement, should have been reviewed instead. He alleged that by focusing on the Human Resources Directorate, she wanted to avoid any questioning of her old directorate. Again, Mr. Singh presented no evidence to support a *prima facie* case that his race and colour were factors in Ms. Proulx's actions.

[656] To the contrary, the evidence is very clear that the Standing Committee's Subcommittee on the Senate Estimates requested a Human Resources Directorate functional review. They questioned the management of the Human Resources

Directorate even before Mr. Singh was appointed director. All the Senate's witnesses testified that this decision came from the Senate and that Ms. Proulx simply followed instructions. This confirms my finding in the previous paragraph that Mr. Singh's race and colour were not factors in Ms. Proulx actions. She merely implemented instructions with respect to the functional review of the Human Resources Directorate.

f. Mr. Singh's letter of reprimand

[657] Mr. Singh maintained that in the first place, in May 2015, Ms. Proulx harassed him and treated him unfairly when she questioned him about his letter of offer (Exhibit E-1, tab 11). The circumstances of its drafting were explained in the testimonies.

[658] Mr. Singh essentially maintained that except for the vacation-leave-transfer issue, for which he was not aware of the relevant policy and for which he apologized, there was no issue. There was none with respect to the salary and the probation period. Moreover, Speaker Nolin signed the letter of offer. Therefore, the issue was closed, and there was no need for Ms. Proulx and her colleagues on the Executive Committee to become involved.

[659] Mr. Singh's position was that the letter of reprimand was too harsh and that it was disproportionate, especially when his situation is compared with Mr. Patrice's director receiving only an oral reprimand for yelling at a subordinate. For Mr. Singh, Ms. Proulx and Mr. Patrice lost trust in him, but they did not lose trust in that director. Therefore, he believes that his race and colour were factors in that differential treatment.

[660] I note that the letter of reprimand was imposed on Mr. Singh by the Executive committee, not just by Ms. Proulx. Also, it is not for me to decide whether Mr. Singh was entitled to a specific salary and whether he was allowed to waive the probation period. The parties agreed that Mr. Singh never grieved the letter of reprimand he received in June of 2015 as a result of his actions and that that disciplinary action was not referred to adjudication under the *PESRA*. Thus, those issues cannot be given new life as part of the grievance alleging that the termination of his employment six months later was discriminatory, which is the only one before me. That said, the context surrounding the letter of reprimand can arguably shed light on the issue of

whether Mr. Singh's race and colour were factors in the way that Ms. Proulx interacted with him.

[661] The evidence revealed that as mentioned, Mr. Singh did not grieve the matter. He apologized for the part about the leave transfer and declared at the time that he "would have fired" himself over it. Nevertheless, he argued at the hearing that the punishment he received, the letter of reprimand, was harsher than the oral reprimand that Mr. Patrice's director had received. Thus, Mr. Singh concluded that his race and colour were factors in that differential treatment. Mr. Singh referred me to *Brar*, at para. 732, in which it was decided as follows that the difference is that discipline might show differential treatment: "Further, the Tribunal has found that heightened scrutiny and discipline that is disproportionate to the conduct at issue might also illustrate differential adverse treatment: [*Kalyn v. Vancouver Island Health Authority*, 2008 BCHRT 377], para. 428-478."

[662] As I said, it is not for me to pronounce on the letter of reprimand imposed on Mr. Singh. However, I would note only that he admitted to preparing the letter of offer and that while the issue of the salary and probation is of no great concern to the parties, he admitted that he should not have transferred the vacation leave. In light of this and the fact that he stated, "I would have fired myself", it is hard to sustain that the letter of reprimand was a disproportionate disciplinary action.

[663] As to Mr. Singh's allegation that Mr. Patrice's director was treated more leniently via receiving only an oral reprimand, which would allegedly show that Mr. Singh had suffered prejudice, the only thing that transpired from the evidence was Mr. Patrice's testimony that the facts of that incident were completely different from those involving Mr. Singh.

[664] In the circumstances, I conclude that there is simply not a shred of evidence that would lead me to conclude that Ms. Singh's race and colour were factors in the decision to give him a written reprimand as opposed to an oral one for drafting his letter of offer.

[665] Further, at the hearing, both Ms. Proulx and Mr. Patrice expressed their concern over the fact that Mr. Singh, as a director of human resources, drafted his letter of offer without signalling to Mr. Pleau that doing so was unusual. They viewed it as a conflict of interest and a contravention of the Senate's code of conduct (Exhibit G-2,

tab 22). They also both said that while they had a concern with the part of the letter that dealt with the salary and the probation period, those were not the most important concerns. They testified that the vacation-leave transfer was different. Both claimed that it was important since it imposed a financial burden on the Senate. According to all witnesses, including Mr. Singh, there is no dispute that he was not entitled to transfer the leave. Further, Mr. Patrice testified that the facts in the similar incident involving one of his directors were completely different from those involving Mr. Singh. This confirms my finding in the previous paragraph that Mr. Singh did not make out a *prima facie* case that his race and colour were factors behind the letter of reprimand that was given to him.

g. Leadership development program for procedural and legislative clerks

[666] On June 12, 2015, which is the same day Mr. Singh received his letter of reprimand, he found out from an email from Ms. Vanikiotis about the leadership development program for procedural and legislative clerks, which fell under Mr. Robert's responsibility. Mr. Singh testified that Mr. Robert went behind his back and that Ms. Proulx was aware of the program and did not tell him about it.

[667] In his testimony, Mr. Singh did not provide much more evidence about the affirmation that Ms. Proulx knew about the program. Therefore, it is difficult to draw any inference from this exchange. Mr. Singh called neither Mr. Robert nor Ms. Vanikiotis to testify with respect to his allegation. The evidence before me did not support making a finding on a *prima facie* basis that Ms. Proulx failed to inform Mr. Singh about the leadership development program for procedural and legislative clerks or that his race and colour were factors in the failure to inform him of that program before June 12, 2015.

[668] However, in her testimony, Ms. Proulx said that she was not involved in the program and that she did not understand why Mr. Singh raised it with her since she had nothing to do with it. She indicated that she thought that he had a communication issue with Ms. Vanikiotis, who might not have informed him of the program.

h. Conference attendance

[669] Mr. Singh also alleged that the fact that he was told that he could attend the Canadian Association of Parliamentary Administration conference in August 2015 after Ms. Bouchard had been told is another sign of adverse differential treatment. As

Mr. Singh offered no evidence in support of his allegation, I cannot find that he met his burden of making a *prima facie* case that his race and colour were factors in the delay.

[670] However, in her testimony, Ms. Proulx indicated that during Mr. O'Brien's tenure, a directive was in place to the effect that for financial reasons, only two persons could attend a conference outside the National Capital Region at the same time. Ms. Bouchard was to make a presentation at the Canadian Association of Parliamentary Administration conference (Exhibit G-9).

[671] Ms. Proulx's testimony is that she brought Mr. O'Brien's directive to the Executive Committee so that it could be amended such that a third person, in this case Mr. Singh, could attend the conference. According to her, Ms. Bouchard and Mr. Singh received their letters confirming their attendance at the Canadian Association of Parliamentary Administration conference at the same time.

[672] While Ms. Bouchard and Mr. Singh received their letters at the same time, I understand from Ms. Proulx's testimony that Ms. Bouchard might have been informed that she was attending before she received the confirmation letter since she was to present at the conference and so needed to prepare. Ms. Proulx was also to make a presentation at the conference.

[673] I do not see anything that suggests that Mr. Singh's race and colour were factors in treating him and Ms. Bouchard differently. Again, Mr. O'Brien was very clear that before the directive could be amended, it needed the clerk of the Senate's (who was replaced by the Executive Committee) approval to allow an additional person to attend a conference outside the National Capital Region.

[674] In my view, the fact that Ms. Bouchard received advance notice to prepare a presentation that she was to deliver at the conference confirms that Mr. Singh's race and colour were not factors in not informing him at that same time that his attendance at the conference had been approved, especially since Ms. Proulx decided to bring the matter to the Executive Committee to have Mr. O'Brien's directive amended to allow Mr. Singh to attend. If anything, the evidence shows that Ms. Proulx needed time to make it possible for Mr. Singh to attend the conference.

i. Alleged comments against senators

[675] In support of his allegations that Ms. Proulx discriminated against him based on his race and colour and was biased against racial minorities in general, Mr. Singh testified about two different occurrences involving him, Mr. O'Brien and Ms. Proulx in which the inappropriate conduct of two senators, who were not Caucasian, was discussed. According to Mr. Singh, each time, Ms. Proulx referred to "these people" when speaking about the two senators. Mr. Singh testified that she used those words each time, referring to the fact that the two senators were not Caucasian. Mr. Singh testified that Ms. Proulx had replied, "You know, those senators all have big egos," when he asked her what she meant.

[676] Mr. Singh did not call Mr. O'Brien to testify, although he could have shed some light as to whether Ms. Proulx said those words and if so, in what context. No explanation was offered as to why.

[677] Mr. Singh had the burden of establishing that the race and colour of the two senators were factors in Ms. Proulx's comments about them. In the presence of Mr. Singh's testimony that Ms. Proulx clarified with, "You know, those senators all have big egos," and in the absence of credible and determinative evidence from the only neutral person who was present on each occasion, I find that Mr. Singh did not discharge his *prima facie* burden with respect to his allegation.

[678] I note that Ms. Proulx denied commenting on the race and colour of the two senators. She maintained that it is not part of her language or DNA to make such a reference or comments. She testified that if anything, she might have said it in relation to the fact that senators have big egos, which was confirmed by Mr. Singh's testimony.

j. The Senate's main estimates

[679] Mr. Singh alleged that a few days before he wrote the November 24 email, Ms. Proulx humiliated him in front of Ms. Legault about him wanting to present to the Standing Committee's Subcommittee on the Senate Estimates the two capsules for additional resources. In his testimony, he said that Ms. Proulx never told him not to prepare the capsules; he insisted that she never said "No". He testified that she came to his office on the morning of November 16, 2015, dancing and holding hands with Ms. Legault, who told him to withdraw them. Mr. Singh indicated that he felt belittled and humiliated by Ms. Proulx in front of a new employee, Ms. Legault. I have to say that

that would be surprising behaviour in the workplace from the Senate's Chief Corporate Services Officer, especially in front of, and with the involvement of, a new employee. In cross-examination, Mr. Singh nuanced his description of the events and admitted that there had been no dancing. He stated that instead, Ms. Proulx and Ms. Legault had looked happy and not solemn.

[680] Therefore, there is no evidence that allows me to conclude on a *prima facie* basis that Mr. Singh's race and color were factors in Ms. Proulx's handling of this issue

[681] However, Ms. Proulx strongly disagreed with Mr. Singh's version and indicated that in August 2015 in the Centre Block lobby and in October 2015, she told him that there was no need for additional funds, since the Corporate Services Branch could absorb the cost of a shadow position and that they should wait for the results of the Human Resources Directorate functional review.

[682] Ms. Proulx was adamant that she had been clear with Mr. Singh and that he took advantage of her being away during the first part of November 2015, because of her father's death, to push his proposals forward.

[683] Moreover, Ms. Proulx categorically denied entering Mr. Singh's office on the morning of November 16, 2015, while holding hands and dancing with Ms. Legault. Ms. Proulx explained that just that morning, she had returned after being away for her father's funeral. Additionally, she barely knew Ms. Legault; Ms. Proulx had met her just once before. I note that Mr. Singh did not call Ms. Legault to testify at the hearing before me.

[684] This confirms my finding at paragraph 680 of this decision that Mr. Singh did not establish a *prima facie* case that his race and colour were factors in Ms. Proulx's decisions and behaviour. While clearly, Mr. Singh wanted additional funding, I think that in November 2015, he certainly knew that Ms. Proulx was against it and that she had already told him that he could not have it, for the reasons mentioned earlier. Did he try to take advantage of the fact that she was away for the first two weeks of November? I cannot say. However, his version of things at the hearing was unconvincing; he stated that "she never said 'No'".

[685] While I can see that Mr. Singh was disappointed by not being able to present his capsules, nevertheless, I do not see anything out of the ordinary in having a supervisor,

who is ultimately responsible for the administration of a given sector, deciding not to bring forward requests for additional resources. It is a matter of the supervisor maintaining credibility in the organization.

k. Ms. Proulx did not provide accurate information to senators

[686] I fail to see how, even if it were proven, anything in the allegation that Ms. Proulx did not provide accurate information to senators might support Mr. Singh's allegation that his race and colour were factors in her actions. I conclude that this allegation is completely baseless.

[687] Only two references to this issue were made in the evidence.

[688] The first was that an employee was working much too much overtime, which had to be rectified. There is no dispute between the parties that no fraud was involved but that simply, an additional resource was required. Both Ms. Proulx and Mr. Patrice testified that everyone was aware of it, including the senators.

[689] The second was to Mr. Singh's letter of reprimand. Ms. Proulx testified that it was not disclosed to the senators to not to alter their judgment against Mr. Singh. If anything, it was done to protect him.

2. Failure to investigate the racial discrimination allegation, contrary to ss. 7 and 10 of the CHRA

[690] In his argument, Mr. Singh maintained that the Senate did not investigate his discrimination allegations and that Senator Housakos's inquiries cannot even be described as a "perfunctory investigation". Mr. Singh submitted that the failure to investigate constitutes a violation of ss. 7 and 10 of the CHRA, which read as follows:

7 It is a discriminatory practice, directly or indirectly,
(a) to refuse to employ or continue to employ any individual, or
(b) in the course of employment, to differentiate adversely in
relation of an employee,
on a prohibited ground of discrimination.

...

10 It is a discriminatory practice for an employer, employee
organization or employer organization
(a) to establish or pursue a policy or practice, or

(b) to enter into an agreement affecting recruitment, referral, hiring, promotion, training, apprenticeship, transfer or any other matter relating to employment or prospective employment,

that deprives or tends to deprive an individual or class of individuals of any employment opportunities on a prohibited ground of discrimination.

[691] Mr. Singh argued that the harassment policy was not followed.

Senator Housakos did not speak with him about his allegations. Senator Housakos spoke only with Caucasian senators during his inquiry into whether Mr. Singh's race and colour were factors in the way that Ms. Proulx interacted with Mr. Singh.

[692] The harassment policy details all the steps to follow in a situation of alleged harassment. If the informal conflict resolution process is unsuccessful, then a formal complaint can be made under the policy's paragraph 4.3.

[693] Once a formal complaint is made, the harassment policy then describes the following steps, like screening the complaint. The policy also details reviewing and investigating the complaint. It is interesting to note that throughout the process, the policy refers to a "formal" complaint (Exhibit G-1, tab 16, paragraphs 4.3, 4.4, and 4.5).

[694] While the grievance referred to adjudication does not directly challenge the Senate's interpretation and application of the harassment policy, it raises nevertheless that the Senate "... failed to investigate [Mr. Singh's] allegations of discrimination." In my view, the matter should be considered with an open mind and with a view that if wrongs have been committed, a fair and reasonable resolution should be favoured.

[695] In his November 26, 2015, email to Mr. Patrice and Mr. Robert, Mr. Singh claimed to "... being very aware of how this process works" (Exhibit G-1, tab 2, page 2). In addition, when he met with Mr. Patrice and Mr. Robert on November 25, the evidence is that he was surprised that Ms. Proulx had shared the November 24 email with them. Mr. Singh did not intend to make a formal complaint against Ms. Proulx. To the contrary, he intended the November 24 email to be "private" between him and Ms. Proulx.

[696] In the circumstances, I do not believe that Mr. Singh intended to make either a formal or informal harassment complaint about Ms. Proulx. Moreover, the language of the November 24 email is clear about his demands, but he also did not want her to

respond. He wrote, "I do not need to discuss it any further as I have put my concerns in writing. I do not require a response. Simple decisions on my requests are all that I require."

[697] In his November 26, 2015, email to Mr. Patrice and Mr. Robert, Mr. Singh also reiterated that he did not ask for an investigation, stating (Exhibit G-1, tab 2, page 2): "Lastly given my loyalty to the Senate and the fact that I do not hold a personal vendetta against the CCSO, I do wish to put in writing that I have not requested an investigation."

[698] In the circumstances, Mr. Singh did not establish a *prima facie* case that he made a formal complaint about Ms. Proulx; in fact, his evidence proves quite the opposite. In those circumstances, was there an obligation for the Senate to launch a formal investigation into Mr. Singh's allegations? I do not think so. As I said, the form should not be an obstacle to fair and just treatment; at any rate, the situation was investigated.

[699] In the circumstances, was Senator Housakos's inquiry into Mr. Singh's allegations a failure of the Senate's obligations under the *CHRA*? Mr. Singh referred me to *Brar*, at para. 732, which states, "... the lack of due process may be evidence of adverse treatment." I have already found that Mr. Singh did not establish a *prima facie* case that his race and colour were factors in Ms. Proulx's interactions with him. I further find that Senator Housakos had no obligations under the *CHRA* to investigate those interactions and that for the reasons offered by the Human Rights Tribunal of Ontario at paragraph 78 of *Scaduto*, as follows, any deficiency in Senator Housakos's investigation did not constitute a breach of *CHRA*:

[78] An employer's failure to investigate a complaint of discrimination can contravene the Code when it causes or contributes to discrimination in the workplace. The breach of the Code is not the failure to investigate per se, but the failure to provide a workplace free from discrimination, which includes discrimination that is caused or exacerbated by a failure to investigate alleged Code infringements. In my view, there must be a finding of discrimination in order to sustain a violation of the Code. There is no contravention of the Code simply because there was a failure to investigate a complaint of discrimination where there is no finding of discrimination. Put differently, the Code is not contravened by the failure to investigate discrimination that does not exist. This finding is supported by the recent decision of

the Divisional Court in Walton Enterprises v. Lombardi, 2013 ONSC 248 at paras. 51 and 54.

[700] Nevertheless, as I will explain later in this decision, in this case, Senator Housakos took reasonable steps to verify Mr. Singh's allegations. Senator Housakos examined all the allegations. He dismissed the ones against Ms. Proulx about directors attending Senate meetings. Just like all the Senate's other witnesses, he was quite clear about the fact that the senators made this decision, not Ms. Proulx. He knew about those decisions and who made them. There was no need to go further. On its face, the allegation was baseless.

[701] For the same reason, Senator Housakos also dismissed the allegation that Ms. Proulx wanted a Human Resources Directorate functional review to take place. Again, just like all the other witnesses, Senator Housakos explained that he and his colleague senators made that decision, not Ms. Proulx. In my view, he did not need to investigate this point further. As the decision maker, with his colleague senators, Senator Housakos was aware that Ms. Proulx did not make those decisions.

[702] Senator Housakos also considered baseless Mr. Singh's allegation that Ms. Proulx give senators incomplete information or withheld it from them. He stressed the fact that had there been an issue about an absence of transparency from Ms. Proulx with respect to senators, it would have been up to Mr. Singh to raise it directly with him. Mr. Singh never did.

[703] This situation differs from *Payette*, which Mr. Singh cited, in which the reason stated for not investigating was simply that the respondent was not the type of person who would do what was alleged to have occurred.

[704] Senator Housakos testified that he was troubled by the allegation stating that Ms. Proulx had discriminated against Mr. Singh on the basis of his race and ethnic origin. Senator Housakos decided to talk to 12 other senators who knew and had worked with Ms. Proulx, to Human Resources Directorate employees, and to a manager working for Mr. Singh. After that, Senator Housakos concluded that this allegation also had no merit.

[705] Mr. Singh also referred me to *Nelson*, in which the Dean of Lakehead University summarily dismissed a complaint about age discrimination that a professor made.

However, in that case, the Dean admitted not knowing about some allegations. As stated as follows at paragraph 101:

[101] ... I am not satisfied that the Dean's response was reasonable in the circumstances... In any event, I have difficulty in accepting that this is a legitimate explanation for the Dean's response in this case because as the Dean acknowledged, he had "no clue" about some to the allegations made

[706] The Human Rights Tribunal of Ontario's vice-chair concluded that there had been no discrimination but that the Dean had failed to investigate the allegations, contrary to the specific provisions of the Ontario *Human Rights Code* (R.S.O. 1990, C. H.19). She did not pronounce on the remedy since the parties were to attempt to settle.

[707] Does that mean that because Mr. Singh made his allegations other than in the context of a formal complaint, they could simply be ignored? Absolutely not. As mentioned earlier, in this case and contrary to the facts in *Nelson*, Senator Housakos certainly knew the subject matters of the allegations since he and his colleague senators had made the decisions at issue, not Ms. Proulx.

[708] As for the specific discrimination allegation, Senator Housakos did inquire into it by speaking with 12 senators and some Human Resources employees, including one manager who knew Ms. Proulx and had worked with her. In my view, it must be kept in mind that Mr. Singh had not intended his allegations to go to anyone other than Ms. Proulx. He did not choose to make a formal complaint because as the director of human resources, he knew full well that a formal complaint triggers the mechanism and process envisaged under the harassment policy, which includes an investigation. He did not elect to do that.

[709] I think that Senator Housakos showed due diligence. He examined some allegations and immediately realized that on their face, they were baseless, and he rejected them. As for the specific discrimination issue, he took the time to talk to not just one or two but a dozen senators and one human resources manager, to gather evidence on the allegation the Mr. Singh's race and colour were factors in how Ms. Proulx interacted with him. From his testimony, no evidence supported the allegation.

[710] I cannot say that Senator Housakos's approach was cavalier or that he was careless. He was troubled by the discrimination allegation and decided to inquire into it. In my view, his approach was sufficiently thorough and reasonable. The fact that he did not talk to senators from visible minority groups is not conclusive in the sense that it was important to obtain the views of those who knew Ms. Proulx and had observed her behaviour. It would have been objectionable had the evidence disclosed that Senator Housakos chose to exclude from his inquiry senators who were members of visible minority groups who also knew Ms. Proulx. As I said, this was not argued. As already mentioned, I agree with the ruling in *Scaduto*, and considering my earlier findings that Mr. Singh failed to establish before me that his race and colour were factors in the way Ms. Proulx behaved toward him, I found at paragraph 699 of this decision that had Senator Housakos failed in the Senate's duty to investigate Mr. Singh's discrimination allegations, such a failure, by itself, would not have amounted to a discriminatory action. However, the evidence before me confirmed that Senator Housakos conducted an investigation nevertheless and that his investigation was sufficiently thorough and reasonable, in the circumstances.

3. Termination of employment for raising racial discrimination allegations, contrary to ss. 7, 14, and 14.1 of the CHRA

[711] Mr. Singh alleged that the termination of his employment was essentially retaliation because he raised discrimination allegations. As mentioned earlier, the evidence shows that Mr. Singh did not intend to make a formal complaint against Ms. Proulx and that he intended the November 24 email to be "private" between him and her. All things considered, I find that the evidence shows that on a balance of probabilities, the senators' decision to terminate his employment was not made in retaliation to him raising those allegations against her. There is no doubt that Mr. Singh made a *prima facie* case that his employment was terminated because of his allegations against Ms. Proulx; however, the evidence also showed that Senator Housakos and his two colleagues were of the view that Mr. Singh and Ms. Proulx could no longer work together.

[712] I accept Senator Housakos's explanation that when he and his colleague senators, Senators Furey and Wells, considered the November 24 email, they concluded that Mr. Singh was no longer willing to work for Ms. Proulx. I agree with Senator Housakos that Mr. Singh never accepted the Senate's new administrative structure. Moreover, he never accepted other decisions that he mistakenly believed had

been made by Ms. Proulx, like the decision to exclude directors from the Standing Committee and the Steering Committee meetings, which was made by those committees, or the decision to carry out a Human Resources Directorate functional review, which was made by the Standing Committee's Subcommittee on the Senate Estimates.

[713] In the November 24 email, Mr. Singh essentially asked that a choice be made between him and Ms. Proulx. As he stated in the email, he was not prepared to discuss its content. He noted as follows that his requests were to be consented to, and that was it: "I do not need to discuss it any further as I have put my concerns in writing. I do not require a response. Simple decisions on my requests are all that I require."

[714] In the circumstances, nothing in the senators' actions or decisions led me to conclude that in fact, they terminated Mr. Singh's employment in retaliation for him raising allegations about Ms. Proulx. Senator Housakos and his two colleagues concluded that Ms. Proulx's authority over Mr. Singh was not the only issue; the Senate's decisions were also mentioned. The senators also felt that their decisions were being challenged. Again, Mr. Singh had the burden of proving that the senators' decision to terminate his employment was retaliation for having raised allegations about Ms. Proulx. He did not meet that burden. The uncontradicted evidence before me showed clearly that the senators' decision was based on Mr. Singh's unwillingness to continue working for Ms. Proulx and within the administrative constraints in place at the Senate.

[715] As mentioned earlier, this case is about very specific allegations that Mr. Singh's race and colour were factors in the way Ms. Proulx interacted with him. As is known, he decided not to challenge the Senate's right to terminate his employment on notice or payment in lieu of a notice, and therefore, I do not have to address whether the senators were justified in thinking that Mr. Singh was unwilling to continue working for Ms. Proulx and within the administrative constraints in place at the Senate.

[716] In his submission, Mr. Singh maintained that he had been the only member of a visible minority group at the executive level and that as of the hearing, there remained no visible minorities at that level. For Mr. Singh, this also shows that the Senate, as an organization, is racially biased.

[717] Although Mr. Singh made oblique mentions of possible systemic discrimination from time to time, they were mostly of a speculative nature. The facts that until the termination, Mr. Singh was the only visible minority in the Senate's executive cadre and that there remains none are not proof that his race and colour were factors in the way Ms. Proulx behaved with him. As stated as follows in *Abi-Mansour*, at paras. 12 and 13:

[12] I did not allow evidence at the hearing on employment equity matters, save for a general document

[13] I do not believe employment equity figures can help me decide whether discrimination occurred in this case. As I explained to the complainant, this evidence is not relevant to the issue at hand, which is whether the respondent's decision to screen him out at a preliminary screening stage for failing to meet the education requirement was tainted by discrimination... I have determined that employment equity evidence is not relevant to the issue before me.

[718] In his final submission, Mr. Singh argued that Mr. Robert, who did not testify, did not want to terminate Mr. Singh's employment. I must say that there was absolutely no evidence of that throughout the hearing. The evidence is that Mr. Robert signed the letter of termination since on December 2, 2015, the Human Resources Directorate reported to him. Mr. Robert, just like Mr. O'Brien, Ms. Vanikiotis, and others, was not called as a witness by Mr. Singh to support Mr. Singh's allegations. As stated in *Filgueira FC*, at para. 13:

...

... No party, and in particular the Respondent, is obliged to call any evidence. The complainant must make out his or her case by its own evidence, using the power of a subpoena if necessary. A complainant cannot rely upon, or even hope that a Respondent will call evidence.

[719] Mr. Singh also stated that in her testimony, Ms. Proulx's answers were not always clear, which might indicate that she has communications issues. I disagree. Ms. Proulx was very clear and precise in her answers. She took the time to explain her reasons or her decisions very clearly.

C. The effect of all the facts

[720] In his review of the evidence, Mr. Singh warned about the temptation to look at the evidence in silos and to forget that discrimination is often based not on a single

event and that the combined effect must be considered of all the situations that Mr. Singh raised. In other words, one must look for a pattern of actions and behaviours that in themselves might be inconsequential but when examined together carefully would lead to the conclusion that there is a *prima facie* case of discrimination. As stated as follows in *Turner*, at para. 48:

[48] A complainant is not required to prove that the respondent intended to discriminate in order to establish a prima facie case as some discrimination involves multiple factors and is unconscious. Indeed, it is often said that discrimination is not a practice that would ordinarily be displayed openly or even practiced [sic] intentionally. As a result, the Tribunal must examine all of the circumstances, invariably often involving circumstantial evidence, that both support and undermine the allegation of discrimination, to determine if there exists what the Tribunal has called the “subtle scent of discrimination”....

[721] I completely agree that all the circumstantial evidence must be examined and that one must look beyond simple facts or situations and wonder whether it is reasonable to conclude that the constellation of those facts makes plausible the discrimination allegation or the differential adverse treatment allegation. As stated, seldom is there a single determining situation that leads to the conclusion that a discriminatory practice took place. A thorough and conscious examination of all the facts as a whole has to be completed before it can be concluded that the situations or decisions at issue were or were not tainted by discrimination.

[722] There is no doubt in my mind that racism and discrimination exist in our workplaces and that measures should be taken quickly to eradicate any sign of it. That said, while it is very important to seriously probe and search for that “scent of discrimination”, as noted in *Turner*, one must be careful not to confuse an acrimonious working relationship between two individuals with a situation in which actions and decisions, consciously or not, are motivated or tainted by racism or discrimination.

[723] As indicated, after reviewing the context, the relevant facts, the allegations, and the witness testimonies, and again keeping in mind that the circumstantial evidence must be appreciated as a whole, I cannot draw from the evidence a *prima facie* case that Mr. Singh’s race and colour were factors in the way Ms. Proulx interacted with him.

[724] However, I found that Mr. Singh did establish a *prima facie* case that the Steering Committee's decision to terminate his employment was made in retaliation for him raising allegations against Ms. Proulx. However, I further found that the Senate disproved that *prima facie* case.

D. Conclusion

[725] This case is about an employee who never accepted a new reporting structure and a new authority.

[726] When Mr. O'Brien was the Senate clerk, Mr. Singh, Ms. Proulx, Mr. Patrice, and Mr. Robert all reported directly to him. It was a flat organization. Mr. O'Brien did not have much time for all his direct reports. Mr. Singh was on equal footing with Ms. Proulx, Mr. Patrice, and Mr. Robert; he also dealt directly with the Standing Committee and the Steering Committee.

[727] At first, things were fine between Mr. Singh and Ms. Proulx. Things then changed in February 2015. Mr. Singh started to report to his former colleague, Ms. Proulx, who was much more hands-on; she wanted to be involved, which he never accepted. To me, his admission to Mr. Patrice that "[i]t used to be the three of you and me. Now it is the three of you without me," is again very telling about the problematic nature of this case. The new administrative structure put in place at the Senate changed the working relationship between the four players, and Mr. Singh did not accept it.

[728] In my view, this situation is a classic case of a change to a reporting relationship that had a detrimental impact on the supervisor and his or her employee, and Mr. Singh's race and colour were not factors.

[729] Both Mr. Singh and Ms. Proulx were senior executives, and they appeared very articulate, assertive, and confident. I do not believe that each felt intimidated by the other. It is simply unfortunate that they did not realize that things were deteriorating to the point of no return and that they did not use their human-resources experience and talents to seek help for their relationship. While they had an acrimonious reporting relationship, it did not mean or allow me to conclude that Mr. Singh's race and colour were factors in Ms. Proulx's attitude towards him. Again, these allegations were not supported by the evidence.

[730] Mr. Singh had the burden of demonstrating, on the balance of probabilities, a *prima facie* case of discrimination. He met his burden only with respect to the Senate's decision to terminate his employment; however, the Senate discharged its burden of disproving that allegation. I therefore find that the Senate did not contravene sections 7-10-14 of the *CHRA*.

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

(The Order appears on the next page)

VI. Order

[732] The grievance is dismissed.

January 7, 2021.

**Linda Gobeil,
a panel of the Federal Public Sector
Labour Relations and Employment Board**