

Date: 20201217

Files: 566-02-10066 and 11535

Citation: 2020 FPSLREB 116

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



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

BETWEEN

MICHELINE HANNA

Grievor

and

**TREASURY BOARD
(Department of the Environment)**

and

**DEPUTY HEAD
(Department of the Environment)**

Respondents

Indexed as

Hanna v. Treasury Board (Department of the Environment)

In the matter of individual grievances referred to adjudication

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

For the Grievor: Fiona Campbell, counsel

For the Respondents: Marc Séguin, counsel

Heard at Ottawa, Ontario,
August 15 to 19, 2016, and January 23 to 27 and February 9, 2017.

REASONS FOR DECISION

I. Individual grievances referred to adjudication

[1] Micheline Hanna (“the grievor”) was at the material time employed at the Department of the Environment (“the employer” or “Environment Canada”) as an evaluation manager in its Audit and Evaluation Branch, classified at the EC-06 group and level. She filed two grievances, the first of which was filed on April 14, 2014 (file 566-02-10066, “the accommodation grievance”), and alleged the employer’s failure to address her treating physician’s recommendations with respect to her return to work, thus violating its duty to accommodate and article 16 (“No Discrimination”) of the collective agreement between the Treasury Board, her legal employer, and the Canadian Association of Professional Employees, her bargaining agent (CAPE or “the union”), for the Economics and Social Science Services Group bargaining unit, which expired on June 21, 2014 (“the collective agreement”), and the *Canadian Human Rights Act* (R.S.C., 1985, c. H-6; *CHRA*). This grievance was referred to adjudication on October 1, 2014, before the then Public Service Labour Relations Board.

[2] On November 1, 2014, the *Public Service Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365; *PSLREBA*) was proclaimed into force (SI/2014-84), creating the Public Service Labour Relations and Employment Board (PSLREB) to replace the former Public Service Labour Relations Board as well as the former Public Service Staffing Tribunal. On the same day, the consequential and transitional amendments contained in ss. 366 to 466 of the *Economic Action Plan 2013 Act, No. 2* (S.C. 2013, c. 40; *EAP No. 2*) also came into force (SI/2014-84). Pursuant to s. 393 of *EAP No. 2*, a proceeding commenced under the *Public Service Labour Relations Act* (S.C. 2003, c. 22, s. 2; *PSLRA*) before November 1, 2014, is to be taken up and continue under and in conformity with the *PSLRA* as it is amended by ss. 365 to 470 of the *EAP No. 2*.

[3] On July 6, 2015, the grievor also grieved the termination of her employment for unsatisfactory performance (file 566-02-11535, “the termination grievance”), which she alleged was also a violation of the employer’s duty to accommodate, the *CHRA*, and article 16 (“No Discrimination”) of the collective agreement. The termination letter, dated June 12, 2015, and signed by the deputy minister, reads as follows:

...

This is further to your performance evaluations outlining concerns with your work performance as considered and assessed over the period of late 2011 until April 2nd, 2015. Your unsatisfactory work performance continues to cause the department concern and has resulted in a significant outlay of time, resources and efforts to provide the necessary assistance and direction for you to meet performance expectations. In spite of these measures, you have failed to demonstrate a significant and sustained improvement and your performance has yet to be at an acceptable standard for Environment Canada.

I have reached the conclusion that you are not able to perform the full range of duties of your position as EC-06 – Evaluation Manager. Further, since all efforts to assist you in improving your performance have been unsuccessful, I have determined that it is unlikely that any amount of additional assistance would overcome the identified deficiencies. As well, although we have considered other options, alternate work (with EC or elsewhere) it is not possible as you fail to meet the required core competencies for continued employment with the Public Service.

In view of the above, and in accordance with Section 12(1)(d) of the Financial Administration Act, I am terminating your employment with Environment Canada for reasons of unsatisfactory performance, effective immediately at the close of business.

...

[4] This grievance also alleged that the termination was unjustified, arbitrary, and in violation of the principles of procedural fairness and equity and that it contravened the employer's directives, policies, and guidelines. It was referred to adjudication on September 22, 2015, before the PSRLEB.

[5] In relation to both grievances, the grievor gave notice to the Canadian Human Rights Commission under s. 210(1) of the *PSLRA*. She alleged that she was discriminated against by the employer's failure to accommodate her disability under ss. 7 and 15 of the *CHRA*. In both grievances, the Canadian Human Rights Commission indicated that it did not intend to make submissions.

[6] 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 PSLEB and the titles of the *PSLREBA* and the *PSLRA* to, respectively, the Federal Public Sector Labour Relations and Employment Board ("the Board"), the *Federal Public Sector Labour Relations and Employment Board Act*, and the *Federal Public Sector Labour Relations Act* ("the *FPSLRA*").

II. Summary of the evidence

[7] As of her termination on June 12, 2015, for unsatisfactory performance, the grievor was a public servant with 27 years of service.

[8] The issues before the Board are: (1) Was the grievor discriminated against on the basis of disability? (2) If not, was the employer's assessment of her performance reasonable?

[9] The grievor grieved her termination from her position classified at the EC-06 group and level. Her responsibilities included leading evaluation projects within the employer's Program Evaluations Section. Immediately before her termination, and while she was seeking accommodation for her disability, the employer identified performance issues, for which she was ultimately terminated. According to her, the employer's process when assessing her performance was flawed. Accommodation needs that her physician had identified for her safe return to work were ignored or were only partially implemented and successful. When she returned to work from sick leave, she was denied training that she required. When her performance suffered, her employment was terminated.

[10] Both parties devoted some evidence to the issue of the classification of the grievor's position. The evidence disclosed and she maintained that she had been promised an indeterminate EC-07 position in 2010 and that she would not have moved to Environment Canada if not for that. The evidence also disclosed that she was appointed to a position at the EC-07 group and level on an acting basis several times during the events in question. However, the indeterminate EC-07 position never materialized, and the employer's concerns with her performance were at least a factor in that decision.

[11] The grievor did not file a grievance on the issue of the group and level of her position, and her termination grievance did not refer to her testimonial allegation that her long-standing dispute with the employer was about her feeling that she had not received the classification that she had been promised. She was terminated while classified at the EC-06 group and level, and the evidence disclosed that her performance had been evaluated with respect to the positions in which she worked at that level. My jurisdiction is limited to her grievances, which were filed in relation to the duties that the employer assigned her at the EC-06 group and level. Accordingly, I

will not deal with the evidence concerning the alleged promise of a position at the EC-07 group and level.

A. For the employer

1. William Blois

[12] William Blois, the employer's director of program evaluation, testified that the grievor reported to him and that as the director, he was familiar with her work. As an EC-06, she was responsible for providing neutral, timely, and credible evaluation services to the deputy minister and senior departmental management and stakeholders in relation to the ongoing relevance of the employer's programs, policies, and budgetary planning (Exhibit E-1, tab 2).

[13] He first met the grievor in the fall of 2010. Shelley Borys was then the director who had hired the grievor. Ms. Borys moved to another department in December 2010, and he became the director on an acting basis. When he took over, the grievor was a senior evaluator and was an EC-07 on an acting basis. Her duties included handling a couple of evaluation projects, and the expectation was that she would assume all the duties of a senior evaluator.

[14] One of the grievor's projects was a Northwest Territories protected-areas-strategy evaluation, on which she worked jointly with another department. Another was to be the evaluation liaison for a green-procurement policy led by Public Works and Government Services Canada (PWGSC).

[15] Mr. Blois testified that he first noticed performance issues with the grievor's work when she dealt with policy and procurement. She took much longer than expected performing her assigned tasks, and a continuous state of friction existed between her and her colleagues. He first intervened in a meeting with her on February 23, 2011, about one of her projects. He raised his concerns with his Human Resources (HR) contact via email and sought guidance on how best to deal with unsatisfactory performance as early as March 21, 2011 (Exhibit E-1, tab 3).

[16] The first step in the process of dealing with the grievor's performance was her mid-year review, which was dated November 23, 2011 (Exhibit E-1, tab 4). In it, Mr. Blois identified her strengths as that she had good focus on detail, that she was very thorough in her reviews, that she was respectful of others in the open office space

they shared, and that she was passionate about her work. He also noted that she was working on only two projects, which in his opinion was a small workload for someone at her level. Within those projects, she produced documents that were primarily boilerplates, subpar, and much delayed. She went significantly over-budget on them and devoted more time than had been allocated, often two to three times what her colleagues would have taken in comparable situations.

[17] Mr. Blois also noted in the grievor's mid-year review that one of her key responsibilities was to nurture relationships with stakeholders and work through issues with partners. According to his testimony, as the director, he had to intervene on several projects to find a compromise with partners and to resolve outstanding issues, which she had been unable to do. He had received numerous complaints from project partners about her inflexible and abrasive approach to project management. In his assessment, she invested a great deal of energy arguing against suggested revisions rather than just making them. When he would try to discuss her projects with her, she would often become agitated and confrontational with him.

[18] In the grievor's performance review, Mr. Blois felt required to note her inability to cultivate, without conflict, a relationship with a co-op student whom she supervised. He had received a complaint from Simon Fraser University about the abrasive treatment and manner of interacting that its co-op student had received from the grievor. Mr. Blois made it clear to her that should he receive further complaints, or should he observe behaviour that he deemed unacceptable, he would pursue discipline against her (Exhibit E-1, tab 4).

[19] In an email to the grievor on November 25, 2011 (Exhibit E-1, tab 6), in a follow-up to their mid-year review meeting of November 23 and 24, 2011, Mr. Blois provided her with her output from the employer's time-recording- system. At her request, he attached the time-recording-system report to the email and acknowledged that many of the employer's performance allegations were based on it.

[20] As the performance review was not positive, options to help the grievor improve her performance were identified. A performance action plan was to be developed to assist her. It was to focus on tempering her investing time into different projects and activities, according to the time allotted, and on training on collaboration and developing relationships and on time management.

[21] Mr. Blois sent the performance action plan to the grievor for her review on December 19, 2011 (Exhibit E-1, tab 6), and asked to meet with her to discuss it the next day. She indicated that she was not prepared to meet with him then as she had not had a chance to review the performance action plan or to review and validate the data reports she had requested and received, upon which her mid-year review had been based. Mr. Blois clarified that the performance action plan was not sent to her for her to change or validate, only for her comments. He was very clear that her approval of the performance action plan was not required, that the performance action plan would proceed, and that her first biweekly report on her projects was due on January 6, 2012. He offered to delay the meeting to review the performance action plan but insisted that they meet no later than January 4, 2012.

[22] Despite the deadlines and the clear instructions that by forwarding the performance action plan to the grievor for her information, Mr. Blois was not inviting her input into its substantive content, she finally emailed her input on January 18, 2012, as part of the biweekly reporting structure that had been set up. She stated in her email that she did not feel that the performance action plan was justified; nor did she feel that the performance action plan that Mr. Blois unilaterally developed would help her achieve her performance objectives as it did not address what she viewed as the root cause of her issues, which she did not specify.

[23] The biweekly reports that the grievor was to provide were required of all employees. They outlined all the work done in the previous two weeks and set out the objectives for the next two weeks. Since the report already existed, Mr. Blois used it as the performance indicator under the performance action plan rather than creating an all-new reporting structure for measuring success under it, which he believed would streamline the reporting process for the grievor. Despite this, she failed or refused to respond to the feedback that he provided to her on these reports related to her progress under the performance action plan.

[24] As a result, on January 19, 2012, Mr. Blois emailed the grievor (Exhibit E-1, tab 7), indicating that despite her disinclination to actively participate in the performance-action-plan process, it was his duty as the director of her division to take steps to address her performance when it did not meet the required standards, whether or not she liked it.

[25] On March 5, 2012, Mr. Blois received, from a departmental senior HR advisor, a copy of a complaint filed by the grievor's co-op student (Exhibit E-1, tab 9). The advisor reported that this complaint was eerily similar to complaints that had been received from other co-op students the grievor had supervised in the past. He sought Labour Relations' assistance, given the severity of the breaches that the student identified in the complaint. Mr. Blois was of the opinion that the grievor's failures needed to be addressed immediately and not allowed to wait until the end of the performance-action-plan period or the conclusion of the annual performance review.

[26] These complaints, along with complaints from members of the evaluation team about some of the grievor's behaviours and the fact that Mr. Blois was still required to intervene with clients, made him concerned about the effect that the grievor's workplace behaviour had on her and her colleagues' well-being. He consulted the employer's Office of Conflict Management and arranged for a facilitated discussion at which the grievor and her colleagues could air their concerns and opinions.

[27] Mr. Blois asked the grievor if she would be willing to contact the Office of Conflict Management so that the process could be explained to her. He made it clear to her that by contacting the office and listening to the representative about the process of a facilitated discussion with her colleagues, she was not agreeing to anything. He found out later that the facilitated discussion never occurred.

[28] In May 2012, Mr. Blois was advised that the grievor had filed a harassment complaint against him alleging that he had abused his authority and that he had demonstrated improper conduct that was offensive to her, which interfered with the performance of her job. This complaint was dated February 15, 2012 (Exhibit E-1, tab 12), but Mr. Blois was advised of it only months later. During the resulting investigation, he and the grievor were separated, and she reported to Gavin Lemieux, another manager who reported to Mr. Blois.

[29] Once the investigation concluded that Mr. Blois had not harassed the grievor, the reporting relationship was restored in September 2013. In anticipation of it, in late May 2013, he emailed her, asking if she would agree to participate in a facilitated discussion with him. She refused as at that point, an ongoing recourse process was underway, and the discussion would not have been appropriate.

[30] At that time, Mr. Blois was not told why the grievor did not want to participate in a facilitated discussion with him but learned later that she had wanted to continue with the harassment complaint process.

[31] The grievor's 2011-2012 year-end performance review took place in September 2012. Mr. Lemieux carried it out, with Mr. Blois's input. Again, it was noted that the employer had concerns with her interpersonal skills; consequently, another performance action plan was required. When Mr. Blois resumed supervising her that month, he prepared another performance action plan, for September 1, 2013, to February 28, 2014 (Exhibit E-1, tab 16A). He did so as he had found that during his absence, not much had changed with respect to her productivity and her relationships with her colleagues and clients.

[32] This version of the performance action plan again focused on interpersonal skills, time management, and production. Mr. Blois and the grievor met only three times for biweekly reviews before she went on sick leave on January 8, 2014, but during the time that led to that leave, he did not see any improvement in her performance.

[33] In support of her taking sick leave, the grievor presented the employer with a doctor's certificate dated December 31, 2013, stating that her current work environment was unhealthy for her emotional health and general well-being, and as a result, she was to be off work. It contained no express duration for which she was expected to be off work (Exhibit E-1, tab 35).

[34] With respect to training, the grievor was encouraged to avail herself of any such opportunities. Mr. Blois thought that she had taken one management course. She was reminded that a training budget was available. Concerning learning tools, he said that self-directed learning was available. When he was asked whether on-the-job coaching was available, he said the grievor could interact with other project leaders.

[35] Mr. Blois said that in December 2013, he attended a meeting of the departmental evaluation committee, at which the grievor presented the results of a protected-areas-strategy evaluation before going on sick leave. He stated that her report was approved, with a few changes.

[36] Mr. Blois did not recall informing the grievor during his meeting with her on March 4, 2011, that she was giving 110%.

[37] When it was suggested to him that before the November 23, 2011, meeting on the grievor's mid-year review, she told him several times that she did not feel respected by him and that he was overly aggressive with her, Mr. Blois said that he recalled problems with the relationship. He did not provide documents to her at that meeting. He said that concerning her interpersonal difficulties, he told her precisely what her behaviours were and who had complained. He also told her about the length of time she took for her deliverables.

[38] With respect to the time-recording-system, Mr. Blois said that it was used as a diagnostic and that it was not the only element he relied upon. He was aware of difficulties with the codes. When it was suggested to him that employees were told that the time-recording-system was not for use in performance management, he replied there was no such specific exclusion. He did not recall that the grievor told him that her understanding was that it was not for performance management. When he was asked whether employees received training on the time-recording-system, he replied that they were given a handbook.

[39] Although Mr. Blois told the grievor that she spent too much time on administration, he did not give her an opportunity to explain her understanding of the time-recording-system codes or definitions. When he was asked whether he considered that she reported significantly lower hours spent on miscellaneous duties, he said that that did not outweigh administrative duties.

[40] Mr. Blois said that the co-op student's email complaining about the grievor was not provided to the grievor (Exhibit E-1, tab 9) and that it was not raised in the performance action plan (Exhibit E-1, tab 6). He said that the reference to the co-op student was in his speaking notes (Exhibit E-1, tab 4), which he did not provide to the grievor. He did not specify whether he told her about the co-op student.

[41] Mr. Blois said that he completed part of the grievor's 2011-2012 performance review as he had supervised her for the greater part of that period. He provided his observations to Mr. Lemieux.

[42] When he was referred to his email of January 9, 2014, to a labour relations advisor stating that the grievor “appears to be AWOL” (Exhibit G-4), Mr. Blois said that at the time, he did not know that she had submitted a medical certificate. He said that he called her at home to inquire how she was doing and not about her medical issue. When he was asked whether it was typical practice to make phone calls to an employee and to contact a union representative when an employee has been out of the office for a couple of days (Exhibit G-6), Mr. Blois said that he had not previously experienced that kind of issue and that he followed Labour Relations’ advice.

[43] Concerning the grievor’s training, Mr. Blois said that a learning development plan was annexed to her performance review but that it cannot be imposed on an employee. He said that he would have mentioned training options to her but that he did not mention anything specific.

2. Julie Bourbonnais

[44] At the relevant time, Julie Bourbonnais was a senior labour relations advisor in Environment Canada’s Corporate Labour Relations group who dealt with third-level grievance hearings. The grievor was present at the third-level hearing of her accommodation grievance, which took place on July 29, 2014. After the hearing, the deputy minister directed Ms. Bourbonnais to find a position for the grievor.

[45] Ms. Bourbonnais canvassed a list of existing EC-06 or equivalent positions in Environment Canada to determine whether any were vacant and whether there was an intent to staff them. She also considered their locations, as well as the medical information that the grievor’s family physician provided in a letter dated April 29, 2014 (Exhibit E-1, tab 44). That information did not indicate specific limitations, but there were some relating to “social emotional demands”, such as workplace issues, teamwork, interacting with her supervisor, and the workplace environment. Ms. Bourbonnais considered these aspects when canvassing positions.

[46] Ms. Bourbonnais identified a potential six-month assignment in a different branch located in a different building and sent the grievor’s curriculum vitae there. She consulted Nathalie Laframboise (“Ms. N. Laframboise”), the labour relations advisor for that branch, who told her that the branch had a positive work environment. Furthermore, the employees there were not aware of the grievor’s accommodation grievance and her harassment complaint, and Ms. Bourbonnais did not inform the

branch's management of that history. Ms. Bourbonnais was informed that the grievor had accepted the assignment.

[47] When she was asked in cross-examination whether anyone had considered options such as telework, Ms. Bourbonnais replied that management was awaiting the results from Health Canada's assessment of the grievor but that she considered the limitations set out in the physician's letter when canvassing available positions. Management did not want the grievor to be in a position in which she would have a workload greater than that of her substantive position.

[48] In a letter dated September 17, 2014 (Exhibit E-1, tab 51), Health Canada advised that no current medical condition had been identified that would adversely affect the grievor in the workplace but recommended a change in reporting structure and work environment. Ms. Bourbonnais considered these recommendations when seeking positions for the grievor.

[49] Ms. Bourbonnais was referred to an email to her and others from Ms. N. Laframboise on October 2, 2014, stating that the grievor did not have the legislative background required for the position in the Legislative Governance Division, which forms part of the Environmental Stewardship Branch (Exhibit G-7). It reads in part as follows:

...

I just had a meeting with John Moffet [director general of the Legislative Governance Division] and Sara Neamtz [a senior manager in the Legislative Governance Division]. They clearly advised me that the employee does not have the qualifications to work under Sara. Employee's [sic] working under Sara need a legislative background and the employee does not have one. They say she would not be able to give her meaningful work.

...

[50] Ms. Bourbonnais said that before the grievor began the assignment in the Legislative Governance Division on October 15, 2014, Ms. N. Laframboise identified a project to which the grievor could contribute significantly that did not require a legislative background.

3. Mr. Lemieux

[51] Mr. Lemieux testified that he was the director of strategic evaluation at Natural Resources Canada and that like Mr. Blois, he managed a team of 12 to 16 analysts who

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were classified at the EC-04 to EC-07 groups and levels. Before he joined Natural Resources Canada, he worked as an EC-07 for Environment Canada for about 4 years, where he supervised the grievor from May 2012 to September 2013.

[52] In May 2012, Mr. Blois approached him and asked that he directly supervise the grievor, given that she had filed a complaint against Mr. Blois. Representatives from HR and Labour Relations told Mr. Lemieux that while he supervised the grievor, he would provide her with the 2011-2012 performance review prepared by Mr. Blois.

[53] Between September and December 2012, the grievor and Mr. Lemieux had a series of discussions about that performance review. She insisted that she was entitled to the review regardless of the situation, so Mr. Lemieux agreed. He had Mr. Blois prepare notes and sought assistance from HR on what type of language to use. The areas to be stressed were her problems meeting deadlines and the quality of her reports.

[54] In early September 2012, Mr. Lemieux met with the grievor to establish how they would proceed in working together and to communicate his performance expectations of her. HR had directed him that if he observed the issues that Mr. Blois had noted in his performance review of her, he was to discuss them with her. To assist in the discussion, Mr. Lemieux gave her a copy of his Employee Performance and Talent Management Agreement for 2011-2012 (Exhibit E-1, tab 26B). She then self-assessed her performance against her agreement. He did not recall whether he used her self-assessment in their discussions on her performance. He primarily delivered Mr. Blois's feedback.

[55] Mr. Lemieux stated that objectives were set for all employees by aligning their commitments with Mr. Blois's objectives for the year. While under Mr. Lemieux's supervision, the grievor's objectives were generally aligned to his, set out in his performance evaluation for 2012-2013 (Exhibit E-1, tab 26C).

[56] Mr. Lemieux commented on the grievor's self-assessment (Exhibit 1, tab 26D), which did not factor heavily in their discussion in terms of documentation. In particular, he commented on the list of accomplishments that she had included. He stated that normally, employees provide a high-level list of two or three things that they have accomplished in the performance cycle. He found her list unusual, as he found the accomplishments she listed transactional. What she provided was more

about evaluation than the documents she produced. One thing that struck him as strange was her reference to the co-op student's early departure in the summer of 2011, when Mr. Lemieux was replacing Mr. Blois on an acting basis.

[57] In her self-assessment, the grievor noted that the co-op student left unexpectedly before the end of her term, without explanation, which was at odds with what Mr. Lemieux remembered happening. One week before the student was due to return to Simon Fraser University, she asked to speak to him privately. According to Mr. Lemieux, she appeared very upset, so he met with her in Mr. Blois's office.

[58] The student explained to Mr. Lemieux that she required a leave of absence for medical reasons and that she did not want to see the grievor before she left. When Mr. Lemieux asked her why, she stated that her work relationship with the grievor was the reason. She had already told the grievor about the need for the leave of absence, and the grievor had responded that the student was not entitled to use her medical note to justify the need and that she was to tell no one about it.

[59] On August 15, 2011, Mr. Lemieux had a discussion with the co-op student coordinator from Simon Fraser University, who reviewed at length the situation of the co-op student's request for a medical leave of absence. During the discussion, the coordinator described the grievor as rude, disrespectful, accusatory, and condescending. Apparently, the grievor had accused the student of being disrespectful, wrong, disloyal, and intentionally deceptive. This treatment caused the student considerable anxiety and distress, which resulted in the requirement for the leave of absence (summary of the discussion at Exhibit E-1, tab 9).

[60] When Mr. Lemieux discussed this conversation with the grievor, she was "quite defensive", according to him. Also according to him, she responded that she had been harassed and that the student had issues, on which she did not elaborate.

[61] Mr. Lemieux testified that he recommended to the grievor to be careful about using words like "disrespectful" and "disloyal". He then sent an email to follow up with her, telling her if she had difficulty dealing with the co-op student, she should have come to him for advice and guidance. At that point, Mr. Lemieux had not had enough experience with the grievor to determine whether there were serious problems with her abilities to supervise co-op students or whether it had been a one-time matter.

[62] In November 2011, the grievor approached Mr. Lemieux and complained that he was not spending the necessary time to support her in her work. At that time, he was working with another EC-07, coordinating a project that required a significant amount of their time.

[63] Around the same time, the grievor asked Mr. Lemieux not to fill an EC-04 position that was vacant with the EC-04 who was working on her projects. At that time, as there were more ECs at the managerial level than at the analyst working level, Mr. Lemieux considered it a priority to fill the position. He and the grievor had discussed this staffing action, so he was surprised when she brought it up.

[64] Mr. Lemieux testified that he approached the EC-04 and asked her about her ability to balance priorities. At his question, the EC-04's "neck turned beet red", according to him, and she asked him whether the grievor had approached him about it. According to Mr. Lemieux, he framed his discussion as a status report, to avoid offending the EC-04 further. She provided him with a list of her problems and concerns working with the grievor and explained to him her difficult working relationship with the grievor.

[65] Mr. Lemieux admitted that he was not ready for such a conversation. The following stood out to him the most: the grievor took the employee into a room and told her that she was disrespectful and disloyal and that the tasks she had completed were meaningless and were not analysis. Mr. Lemieux offered to speak to the grievor about this if the employee wished him to. He also suggested that the employee could speak to Mr. Blois or that she could put her concerns to him in writing. Instead, the employee chose to move to another position.

[66] The grievor's ability to manage staff was clearly a concern, according to Mr. Lemieux. In early 2012, another co-op student complained about difficulties with the grievor. Mr. Lemieux had worked with that student on his projects and was aware of the student's work and abilities. Based on his experience, Mr. Lemieux told the student that he would speak to the grievor but that if the student thought it was too serious to resolve in this fashion, the student should speak to Mr. Blois, which to Mr. Lemieux's knowledge, he did.

[67] For all these reasons, when he read the grievor's assessment of personnel in the performance evaluation she had drafted, red flags were raised. He had been

approached by more than junior staff members complaining about her. As a matter of due diligence, since the issues had come up from different levels, and he had not witnessed the behaviour himself but rather its fallout, Mr. Lemieux took it upon himself to work with her in the area of managing personnel.

[68] On September 27, 2012, Mr. Lemieux met with the grievor to discuss her performance for the year 2011-2012 and objectives and learning plan for 2012-2013. He took the notes given to him by Mr. Blois to refer to during the discussion on 2011-2012. Included in the discussion was one about the employer's expectations for her performance and her performance objectives for 2012-2013. He also took the opportunity to discuss his concerns with her interpersonal skills. This is summarized in the overview of performance attached to the performance-review document (Exhibit E-1, tab 29).

[69] In particular, under the areas of concern, Mr. Lemieux highlighted that the grievor's colleagues had reported that they had either had or witnessed negative interactions with her in which she had been argumentative and confrontational. Two co-op students had filed complaints about how she had treated them while supervising them. Complaints had also been made about her behaviour by Environment Canada senior managers and staff involved in her projects, senior evaluation officials at two departments while she was the Environment Canada contact person, and junior staff on her team.

[70] Other concerns highlighted were related to her timely completion of tasks. She had only two deliverables during the fiscal year, with which she encountered delays and serious performance deficiencies, such as investing a great deal of time trying to write an evaluation plan for a project that would be contracted out and giving no departmental evaluation committee presentations during the entire period. She had a much lighter workload than did other EC-07s and EC-06s.

[71] While most of her colleagues were assigned in-house projects in addition to contracted requirements, corporate projects, and consultations, the grievor was assigned only two contracted projects and consultations. The scopes of the consultations assigned to her were much smaller than those assigned to her colleagues because of the number of complaints that had been filed against her. Despite this, she had gone significantly over-budget on her assigned projects.

[72] Overall, the performance-review meeting was not productive, according to Mr. Lemieux. By December 2012, it was time for him to conduct the grievor's mid-year performance review, in which they reviewed the status of her objectives to determine whether she was on track to meeting them. On December 6, 2012, he emailed her and attached the 2011-2102 performance review in anticipation of the review (Exhibit E-1, tab 30).

[73] In his email, he raised his concern about their communication breakdown. She had not advised him of a planned absence for training purposes. She had not informed him that she would be absent; nor had she advised him of who would be responsible for her projects in her absence. He asked that their discussions focus on time management and on prioritizing tasks.

[74] By December 2012, the grievor's performance had not improved to the point that she met expectations, and Mr. Lemieux was forced to take the next step in the performance management framework, which was to put her on a performance action plan to develop her performance from June 1 to December 13, 2012 (Exhibit E-1, tab 31). The specific objectives to be met dealt with time management, flexibility and adaptability, results orientation, and teamwork.

[75] Mr. Lemieux discussed the performance action plan with the grievor and stated that he mainly recalled that although they had some disagreement, the meeting was positive.

[76] In addressing his appraisal of the grievor's performance for 2012-2013 (Exhibit E-1, tab 32), Mr. Lemieux said that while she did not have control over assignments, her output was lean compared to that of her colleagues. She was diligent, but her production within the time standards was not up to par. Mr. Lemieux noted that the 360-degree feedback with colleagues indicated that she had fewer interpersonal interactions and confrontational encounters.

[77] Since during the performance-review period, the grievor had only one project for which she was the author or manager, Mr. Lemieux could not comment on any significant written work she produced. Her biweekly reports were very detailed even though less detail was required. His approach was to have her recognize the problem and keep her reports at a higher level. Her workload was low, but her production

lagged. His meetings with her about her performance were difficult, but he felt that he and the grievor were at a better working level.

[78] Mr. Lemieux felt that he had to resume the performance action plan, but first, he had to complete the protected-areas-strategy evaluation project. However, in February 2013, the grievor informed him of a family issue, and she went on leave for most of March 2013. Upon her return, he observed that in his words, she “was not 100%”. In the circumstances, he felt that it was not appropriate to resume the performance action plan.

[79] During the springtime, the grievor indicated to Mr. Lemieux that she was dealing with stress and medical issues, and he took her at her word. She later indicated that she had a heightened level of stress. During the summer, he observed that she demonstrated signs of stress, and he suggested that she take medical leave, which she declined. By then, he had worked with her for over one year. He was concerned and tried to engage her on the reason for her stress, to determine whether it was her workload or her relationship with Mr. Blois.

[80] After the grievor no longer reported to him, and while he was acting for Mr. Blois, she was to give a presentation on the protected-areas-strategy evaluation report to the departmental evaluation committee. One of his tasks was to work with her and another manager to gather feedback from the director general of the Audit and Evaluation Branch, Robert D'Aoust, which took place during a meeting that all three attended. Mr. Lemieux thought that the meeting had been positive, as only a few revisions to the report had been suggested.

[81] Shortly after the meeting, the grievor went to Mr. Lemieux's cubicle. She was visibly stressed and tearful, and she told him something to the effect of, “If you want to put me in the ground, this will do it.” He was alarmed and suggested that she contact the Employee Assistance Program or take medical leave. She offered no other explanation. He did not think that there were issues that would cause that level of stress. Mr. Lemieux said that during 2012-2013, while she still disagreed with him, they had a better working relationship.

[82] In cross-examination, Mr. Lemieux said that he was not given details of the grievor's harassment complaint but that he knew that her relationship with Mr. Blois was troubled.

[83] The grievor's individual learning and development plan (Exhibit E-1, tab 26D) was the same as that of other employees.

[84] Mr. Lemieux said that at the time, he did not notice issues between the grievor and the co-op student from Simon Fraser University. Mr. Lemieux was satisfied that he and the grievor had come to an understanding. Mr. Lemieux had a follow-up discussion with the Simon Fraser University co-op coordinator in which he informed her that he had spoken with the grievor. Mr. Lemieux emailed Mr. Blois, and he emailed the coordinator a copy of what he sent to Mr. Blois.

[85] Mr. Lemieux did not raise the issue with the EC-04 in November 2011 with the grievor because the EC-04 did not wish him to. He acknowledged that he did not have the grievor's version of that issue. He told the EC-04 that she could raise the matter with Mr. Blois.

[86] Concerning the overview of the grievor's performance (Exhibit E-1, tab 29), Mr. Lemieux said that the overview notes were his and that he prepared them before the meeting with her and that he provided her with a copy. The notes contained information he had received from Mr. Blois.

[87] Mr. Lemieux intended that the evaluation emailed to the grievor on December 6, 2012 (Exhibit E-1, tab 30), be the final version for 2011-2012, but that was not the case. The final version (Exhibit E-1, tab 33) was issued a year later, which he approved and signed. He said that while some comments in the earlier version were removed in the final one, there were some commonalities.

[88] Mr. Lemieux stated that there was no performance action plan between May and November 2012. Concerning the performance action plan for December 1 to 13, 2012 (Exhibit E-1, tab 31), he believed that he discussed it with the grievor and that he gave her a copy of it at their meeting, which he agreed might possibly have been on December 13, 2012, instead of on December 17, contrary to what he had stated.

[89] Concerning the level of detail in the grievor's biweekly reports, Mr. Lemieux stated that while Mr. Blois had commented on it, he had made the same observation. His understanding was that they had too much detail and that they should have been at a higher level.

[90] With respect to the 2012-2013 performance evaluation, Mr. Lemieux prepared the first version, and the second was the merger of his assessment and the grievor's self-assessment for 2012-2013 (Exhibit G-8). The supervisor's comments are his, and he provided her with a broad outline of them in an email on August 9, 2013 (Exhibit G-10).

[91] Mr. Lemieux agreed that in the section of the 2012-2013 evaluation titled, "Performance Improvement Strategy" (Exhibit E-1, tab 32, last page), he did not raise the performance action plan in the self-assessment notes he provided to the grievor.

[92] Mr. Lemieux said that according to his email of December 4, 2013, to Mr. Blois (Exhibit G-9), he spoke with the grievor about stress in August and September 2013. She referred to stress in the context of her work duties and her relationship with Mr. Blois.

[93] Mr. Lemieux acknowledged that while he supervised the grievor, Mr. Blois determined her workload.

4. Michelle Laframboise

[94] Michelle Laframboise ("Ms. M. Laframboise") worked at Environment Canada for six years, the first three of which as the director of labour relations and classification and the latter three as the director general of workforce development and wellness services.

[95] In the fall of 2012, she was approached by the grievor and her union representative to discuss the grievor's 2011-2012 performance evaluation as they did not agree with its content. She met with management and offered her services to work toward an agreement between the parties. The discussions lasted about six months. She wanted the process to progress. While there was a performance action plan, before addressing the grievor's shortcomings, the evaluation had to be finalized, and an overlap with the 2012-2013 period was approaching. Ms. M. Laframboise made suggestions on wording to management but did not write the evaluation and was not privy to the grievor's performance.

[96] Ms. M. Laframboise was also involved in the grievor's accommodation request. In her letter of April 24, 2014, to Dr. Christine Harrison, the grievor's treating physician (Exhibit E-1, tab 43), Ms. M. Laframboise requested additional information to

that received from Dr. Harrison in her medical certificate of March 24, 2014 (Exhibit E-1, tab 40), which Ms. M. Laframboise believed indicated that the grievor was fit to return to work but to a different work environment. Ms. M. Laframboise stated that management had to ascertain whether the grievor had a medical disability, a condition, or limitations that required accommodation. In this respect, management had to ensure that the treating physician had the information to provide her recommendations.

[97] Ms. M. Laframboise said that Dr. Harrison's response of April 29, 2014 (Exhibit E-1, tab 44), did not address all the questions put to her. Dr. Harrison provided information on the grievor's health and perception of the workplace and stated that the grievor did not want to return to work for the same supervisor. There was no information concerning the grievor's medical condition or disability. Dr. Harrison stated that the grievor's health concerns were situational.

[98] When management is of the view that the treating physician's information is insufficient, it refers the employee to Health Canada for a fitness-to-work assessment. Ms. M. Laframboise so informed the grievor's union representative, Yves Rochon, a labour relations officer with CAPE, in a letter dated May 14, 2014 (Exhibit E-1, tab 45), to which he responded on May 23, 2014 (Exhibit E-1, tab 46).

[99] In her letter to Health Canada of June 13, 2014 (Exhibit E-1, tab 47), Ms. M. Laframboise asked whether a medical condition existed that would adversely impact the grievor's work performance or behaviour. Health Canada's reply was dated September 17, 2014 (Exhibit E-1, tab 51). The only position it could have evaluated was at the EC-06 group and level, since it was provided with that work description.

[100] On April 23, 2015, a meeting was held, which Ms. M. Laframboise, Renée de Varennes of Labour Relations, the grievor, and Mr. Rochon attended, to explore the grievor's options other than another position at Environment Canada, as her assignment at the Legislative Governance Division was ending. Initially, the grievor's assignment was due to end in April 2015, but was twice extended, with an end date of June 16, 2015. According to the terms of the assignment, she was to return to her substantive position upon the completion of the assignment. At the meeting, Ms. M. Laframboise made it clear that it was becoming increasingly difficult for management to identify positions for which the grievor was qualified. She suggested examples, such

as an interchange in the private sector or academia or leave, such as education leave, to pursue other employment, and asked whether the grievor was contemplating retirement.

[101] Ms. M. Laframboise explained that the difficulty finding a position for the grievor was due to a lack of good references. When she was placed in the Legislative Governance Division, her history was not provided. Thus, the Legislative Governance Division was eliminated when her placement there did not work out. Management was running out of options because the grievor could not return to her original branch (the Audit and Evaluation Branch). The union's position was that the employer had to find the grievor another job within Environment Canada, which it affirmed in a letter from Mr. Rochon dated May 12, 2015 (Exhibit E-2).

[102] Following the April 23, 2015, meeting, the Legislative Governance Division wrote its appraisal of the grievor's performance. She did not meet the objectives set out for her position. The Legislative Governance Division stated that it would not retain her or seek alternative positions for her within that Division. Ms. M. Laframboise said that in a meeting in April 2015, Mr. D'Aoust, the grievor's substantive director general, was informed that there were no positions for which she was qualified and that there were no other available assignment options. Ms. M. Laframboise said that Mr. D'Aoust decided to meet with the deputy minister and to recommend terminating the grievor for poor performance.

[103] In cross-examination, Ms. M. Laframboise said that she had been in the harassment coordinator role when the grievor filed a complaint against Mr. Blois.

[104] Ms. M. Laframboise saw the first-level response to a harassment grievance filed by the grievor in 2013 (Exhibit E-1, tab 52) in which she contested how she was being managed. Ms. M. Laframboise stated that she believed that management had sought alternate positions for the grievor in the summer of 2014. Management had met with her and had requested her résumé, to begin the search. Its concern was that she was unable to do the work of the position she occupied and that it was a competency issue. Her relationship with Mr. Blois was strained, and she had filed several grievances. Even though her harassment complaint was determined unfounded, it made the relationship difficult.

[105] Concerning her testimony-in-chief that Dr. Harrison's letter indicated that the grievor did not want to work with Mr. Blois, Ms. M. Laframboise said that that was her interpretation of the letter. She said that Dr. Harrison was not informed by management of the grievor's harassment complaint or other information but had been informed only of what the grievor told her.

[106] When she was asked whether management considered options such as teleworking, Ms. M. Laframboise said that even had the grievor teleworked, she would have reported to the same supervisor. Management did not know what Dr. Harrison meant by a different work environment. Even had the grievor reported to another supervisor, she would have been in the same work environment.

[107] Management maintained the grievor on paid sick leave because as she had sufficient leave, it was not a financial hardship.

[108] The grievor was provided a copy of Ms. M. Laframboise's letter to Health Canada of June 13, 2014 (Exhibit E-1, tab 47). Management informed Health Canada about the labour relations situation as per normal practice. It was not normal practice to permit the employee involved to comment on that information.

[109] As to whether Health Canada's assessment (Exhibit E-1, tab 51) was similar to Dr. Harrison's recommendations, Ms. M. Laframboise said that Health Canada provided additional information, namely, the grievor required a change to the reporting structure, while Dr. Harrison had recommended a work environment change.

[110] Concerning the grievor's performance evaluation for 2011-2012, Ms. M. Laframboise did not recall whether she had met with the grievor and Mr. Rochon between January and October 2013. Nor did she recall meeting or having a discussion with Mr. Lemieux about it in that same period. She vaguely recalled meeting with Joseph Silva (who was Ms. M. Laframboise's supervisor) and Mr. Rochon on April 2, 2014 (Exhibit G-14), with respect to the grievor's need for accommodation.

[111] Concerning Mr. Rochon's emails to her of February 25, March 31, and April 8, 2015 (Exhibits E-2 and G-15), Ms. M. Laframboise stated that she did not know that they were meeting requests. She replied the same day to his February 25 email, and she was out of the office on March 31, on which date Mr. Rochon received an out-of-office response. She replied to the April 8 email the same day.

5. Laura Farquharson

[112] Laura Farquharson, who is a lawyer, was at the material time the executive director of the Legislative Governance Division of Environment Canada and had occupied that position for six years. She had previously worked at the Department of Justice.

[113] Ms. Farquharson described the Legislative Governance Division at the time as comprising approximately 25 employees and being the focal point for law reform as well as for policy and operational responsibilities. It developed proposals for amending or for new environmental legislation, reviewed proposals from other departments that might affect the environment minister, and developed positions for ministerial approval. It also looked at emerging issues that might have a legislative aspect, such as climate engineering and water issues.

[114] The Legislative Governance Division worked on a matrix system, with three managers having HR responsibilities. As employees could work on multiple projects and report to a different manager for each one, each reported to one person for HR matters, who was called the “homeroom manager”.

[115] In August and September 2014, the Legislative Governance Division sought an EC-06 to fill a vacancy and was alerted to the grievor as a priority (Exhibit E-1, tab 60). Initially, a senior manager in the Division, Sara Neamtz, said that the grievor would not meet the qualifications of the position and that the Division was looking for someone who could “hit the ground running”. Ms. Farquharson’s director general, John Moffet, advised her that they would take the grievor on a six-month assignment.

[116] Ms. Farquharson said that management had to find projects more appropriate to the grievor’s background (Exhibit E-3). Management decided that Ms. Neamtz, who was one of Ms. Farquharson’s strongest managers, would be the grievor’s homeroom manager. That decision was deliberate, as all Ms. Farquharson knew was that the grievor had to be in a new work environment, and Ms. Farquharson wanted to make it as positive as possible. Ms. Neamtz identified that the grievor could work on the biodiversity offsets policy (measurable conservation outcomes designed to compensate for adverse impacts of development projects).

[117] Ms. Farquharson spoke with John Beaudoin, one of the managers in the Legislative Governance Division responsible for water issues. As the government had identified that water issues might become a priority, Ms. Farquharson thought that the grievor had the background for it, as she held a PhD in hydrobiology and aquatic ecosystem management. Her résumé also indicated that she had done a comparative review of drinking water legislation involving eight jurisdictions. While it might not have been a perfect match, Ms. Farquharson thought that a project that consisted of preparing an overview and summary of water legislation in Canada, without further analysis (“the water-legislation-research project”), might be appropriate for the grievor.

[118] The grievor was first assigned to the offsets project dealing with hydraulic fracturing (“the fracking project”), as an offshoot of the water-legislation-research project. Ms. Farquharson met with the grievor on October 17, 2014, and explained the context for the request, which was a medium-term priority without much specificity. As information, she gave the grievor a couple of PowerPoint presentations, Environment Canada’s mandate, and the applicable legislation.

[119] The water-legislation-research project was to be an overview of the federal framework for the governance of water and was to identify which departments were responsible for which aspects and whether there were areas for improvement. Ms. Farquharson described the objective of the project and told the grievor that she would be working with Mr. Beaudoin.

[120] Ms. Farquharson stated that while a legal background might have helped for the water-legislation-research project, it was not required, as it was an ordinary research project and not a request for a legal opinion. At the time, five employees in the group were carrying out legislative work and were not lawyers. One begins by gathering information and reading, reviewing secondary sources, synthesizing the information, and then carrying out an analysis. Many employees in the Legislative Governance Division could have helped the grievor.

[121] The grievor was given the opportunity to carry out pure policy work, such as on offsets of fracking. During the fall, one of the managers was drafting a memo to the deputy minister about an operational policy that had privacy implications. The manager had done the work but needed help writing the memo. The grievor initially said that she could not do that work.

[122] The fracking project was quickly dropped, as the grievor said that she could not do that work. Ms. Farquharson said that normally, someone at the EC-06 level who had been an EC-07 on an acting basis should be able to handle multiple tasks. When employees have been in a new area for six weeks, they should be functional.

[123] Ms. Neamtz worked on the offsets project, and the grievor would have reported to her. On the first day, the grievor was given reading material, but because she initially said that it was too much, it was dropped. Her remaining workload was the water-legislation-research project.

[124] As an update to the *Saskatchewan Environmental Code* had come into force, the grievor was asked what it was about and if there was anything interesting about it. That task would take a maximum of one day.

[125] Ms. Farquharson said that the grievor did not meet the expectations on the water-legislation-research project. From October 2014, she never produced the requested report; however, she presented two draft reports, the first on December 17, 2014, and the second on March 3, 2015. On December 9, 2014, Ms. Farquharson held a meeting with Ms. Neamtz, Mr. Beaudoin, and the grievor. The grievor had requested a meeting to receive direction from Ms. Farquharson, who was becoming anxious about the lack of progress on the project.

[126] The first thing the grievor was supposed to do was create an outline of how she would do the work of the water-legislation-research project. She made two, on November 7 and 28, 2014, but not much had changed in those versions. The entire water-legislation- research project was to have taken six weeks, but Ms. Farquharson had not heard back by December 2014. Mr. Beaudoin and Ms. Neamtz said that the grievor was showing resistance by not taking their comments. Ms. Farquharson thought that while the grievor had done the research but not put it on paper, perhaps she had the information orally. Ms. Farquharson recalled that at the December 9, 2014, meeting, the grievor “had been capable and could explain herself”. There were some weaknesses in her understanding of the basis of legislation and the legal background.

[127] Ms. Farquharson said that the employer was looking for a report on what was being said about the issues and that related the issues to the legislation. For example, on the water quality issue, the applicable legislation should have been determined. At the meeting, they wanted to hear the grievor and set expectations. The grievor said

that she had not read the legislation because she had been told not to.

Ms. Farquharson said that the grievor had been told to read it. They were not looking for a statutory interpretation or a legal opinion but instead a report on what the legislation was about.

[128] During the meeting, Ms. Farquharson emphasized that when carrying out research, one has to keep track of it in a bibliography. In an attempt to help, she sent the grievor documentation she had amassed in the course of her work, which she felt might be of assistance. She had reviewed 5000 documents in the course of an access to information and privacy (ATIP) request, many of which were related to water. The documents covered water governance in Canada, federal and provincial roles, a list of all legislation, and some analysis. Ms. Farquharson tagged about 25 that she thought would be helpful to the grievor and requested that the grievor update a particular document. The grievor copied 3 or 4 of them, but not the one Ms. Farquharson had asked her to update; it was not seen again.

[129] Both Ms. Neamtz and Mr. Beaudoin commented on the grievor's December 17, 2014, first draft of the water legislation research, but those comments had not been incorporated when Ms. Farquharson received a copy of the new version on February 6, 2015. The grievor had not updated it since December 17. Ms. Farquharson emailed the grievor comments on the draft on February 9, 2015 (Exhibit E-1, tab 85), met with her that day, and went through her comments.

[130] During the meeting, the grievor spoke about the hurdles she faced working with Mr. Beaudoin. She said that he was disrespectful and not always available. Ms. Farquharson took it seriously and asked if the grievor was mentioning it to Ms. Neamtz, which she said she was. Ms. Farquharson asked if the grievor wished her to do anything about it, but the grievor declined and said that she would work it out with Ms. Neamtz.

[131] Ms. Farquharson made it clear that the grievor's report was not meeting her expectations and that she was not working as Ms. Farquharson expected an EC-06 should. She thought that more progress should have been made, given the length of time spent on the water-legislation-research project. Ms. Farquharson said that the grievor probably told her that the project was taking longer because the grievor lacked a legislative background.

[132] In early April 2015, a meeting was held about the grievor's performance evaluation. Attending were Ms. Farquharson, Ms. Neamtz, and the grievor. Ms. Neamtz prepared the assessment, and the evaluation was, "Does not meet". Ms. Farquharson had reviewed it for tone, to ensure that it was fair.

[133] The grievor requested a second review of the evaluation. If an employee is not satisfied with the evaluation process carried out by his or her immediate manager, he or she can ask that the manager of his or her immediate manager review it. The purpose is to ensure the integrity of the process. The second review is to determine that objectives were established, expectations were reasonable, feedback was provided during the evaluation period so that the evaluation was not a surprise, a written explanation was provided for each objective and competency, and the rating was supported by examples in the evaluation.

[134] Ms. Farquharson carried out the second review on her own by May 13, 2015. She examined the evaluation and reviewed it in light of what she knew had occurred. When she completed her review, she advised the grievor that the process had been followed. Ms. Farquharson met with her about the second review once in May 2015.

[135] The grievor told Ms. Farquharson that there had been a miscommunication and that her evaluation had been a surprise. She had not been told that she was not meeting expectations. She cited hurdles with Mr. Beaudoin that affected her productivity, along with the complexity of the water-legislation-research project.

[136] In cross-examination, Ms. Farquharson said that she was not told anything about or instructed to document the grievor's performance or coaching. She was informed that the grievor had begun her gradual return to work to a new work environment and that she had no functional limitations.

[137] The grievor was not provided with specific training on legislation. She was given background information about departmental legislation. Ms. Farquharson said that training can take many forms, including instructing the employee to read certain materials and to seek clarification if any questions arise. The grievor applied for and completed some training but did not say that she needed legislative training to do the job.

[138] On December 18, 2014, Patricia MacLellan, a manager in the Legislative Governance Division, sent an email (Exhibit G-16) to Ms. Neamtz and others, indicating that the grievor's inability to work on more than one file at a time was "... partially a result of the employee not having a strong legislative background, which is a qualification for the Senior Legislative Policy position she occupies." Ms. Neamtz stated that this comment was not included in the final version of the employer's comments that were sent to the deputy minister. Management had been looking for a person to hit the ground running, as the projects were high profile. The grievor was not the type of person they were seeking for the position, and they adjusted her workload to fit her different types of work. By the time the grievor's performance evaluation was prepared in April 2015, many accommodations had been made for her; she was not fit for the job.

[139] When she was asked whether the grievor's lack of legislative background contributed to her problems at work, Ms. Farquharson replied that the grievor had far too many other shortcomings for that to be a dominant explanation. With respect to the water-legislation-research project, Ms. Farquharson and the managers gave her instructions and broke the project down into steps of gathering information and creating an annotated bibliography. She was also given information sources. Ms. Farquharson stated that the grievor had sufficient background and had had enough time to complete one project in nine months.

[140] Ms. Farquharson said that the grievor was not on a performance action plan while in the Legislative Governance Division, as she was on a six-month assignment.

[141] Concerning her email exchange with Ms. Neamtz on January 7, 2015 (Exhibit G-17), Ms. Farquharson said that when a new employee arrives, performance objectives have to be established within three months. As the grievor's assignment was for six months, management tried to establish the objectives by November 2014. An effort was made to reduce the scope of the grievor's work. Ms. Neamtz was concerned that the performance agreement being written did not align with the objectives of an EC-06.

6. Mr. Beaudoin

[142] At the relevant time, Mr. Beaudoin was a legislative policy manager, classified EC-07, in the Legislative Governance Division. He supervised the grievor as a manager of projects under his area of responsibility, one of which involved water. His role was

to be accountable for deliverables, including the supervision of employees assigned to the water file. He was the project manager for water from October 2014 to March 25, 2015.

[143] Mr. Beaudoin met with the grievor upon her arrival in the Legislative Governance Division (Exhibit E-4). He told her that the Division had a collegial atmosphere and that he had an open-door policy for employees to approach him. She was to work on a project for approximately six weeks that consisted of preparing an overview and summary of water legislation in Canada, without further analysis. While six weeks was longer than usual for such a snapshot, Mr. Beaudoin acknowledged that the grievor was new to the Division and that her first week was taken up with setting up computers and the like.

[144] Mr. Beaudoin said that he has a two-way conversation with employees. He sets out his vision for a project, the steps to be taken, the scope, and the timeline. He often asks the employee to take the first step at creating the work plan, but it is a collaborative effort.

[145] A work plan contains a description of the project, along with the milestones and deliverables, with due dates. Some work plans contain next steps and consultation with stakeholders. They are tools to discuss progress and timelines and to brief higher management on the steps as they progress.

[146] The grievor's first deliverable was to provide the work plan for the water-legislation-research project in two weeks. Normally, work plans are finished in a few days at most, but Mr. Beaudoin set that time frame to accommodate her newness in the Legislative Governance Division.

[147] After several weeks, no agreement had been reached with the grievor on the work plan. She and Mr. Beaudoin agreed to begin with step 1 of the water-legislation-research project. However, there was no consensus on the project's scope, and she did not appear to understand what was expected for step 1. She also disagreed on the extent of the research. Management preferred that it include the federal, provincial, and territorial levels. Although Mr. Beaudoin agreed to narrow the scope to federal legislation, the grievor disagreed on the nature of the legislation; for example, whether it should include water-related legislation that was unrelated to the minister or her mandate, and whether it should include the fracking project.

[148] Throughout the process, there was disagreement on incorporating Mr. Beaudoin's comments or those of the grievor's homeroom manager, Ms. Neamtz, who was involved in support. The grievor was unwilling to commit to timelines at any steps of the water-legislation-research project, particularly at step 1.

[149] Mr. Beaudoin met with the grievor on March 25, 2015, to discuss his written comments on her draft report. He said that as the water-legislation-research project progressed, she demonstrated an antagonistic pattern of behaviour, and that at a certain point, he became uncomfortable discussing the project with her one on one. It was agreed that Ms. Neamtz would sit in on meetings to discuss the project. Under the matrix management system, it was not typical for a homeroom manager to attend discussions about projects under a project manager's area of responsibility.

[150] Mr. Beaudoin then explained his reference to what he perceived as the grievor's pattern of antagonistic behaviour. When she was asked questions during their meetings, she would not comment as to whether she agreed to them. If he perceived that she did not appear to understand a question, he would reformulate it. She would then object to the reformulation and use that opportunity in the conversation to raise an unrelated point, to indicate that she was under stress. She would tell Mr. Beaudoin that he was not her manager and that she wanted to hear from Ms. Farquharson.

[151] Another of the grievor's tactics was to interrupt him or Ms. Neamtz in the midst of a conversation, to disrupt the discussion. When they would attempt to respond to some of her concerns that were outside the scope of the water-legislation-research project, and she would persist on that course, they would try to diplomatically steer the discussion back to the project. She would then say that they were being disrespectful. Meetings with her scheduled for 30 minutes would often exceed 60 minutes and, once, 90 minutes.

[152] As Ms. Farquharson had concerns about the progress of the water-legislation-research project, a meeting was scheduled, to be attended by her, Mr. Beaudoin, Ms. Neamtz, and the grievor, to discuss the grievor's project and suggested questions. Mr. Beaudoin said that the intent of his email to the grievor of December 4, 2014 (Exhibit E-1, tab 68), was to give her an opportunity to discuss the progress in advance of the meeting. She could have sought clarification on any of the matters itemized in the email.

[153] Mr. Beaudoin said that his email of December 4, 2014, referred to ensuring that the source material of older documents was confirmed or updated, and for reviewing legislation, ensuring that it was current and that any potential amendments were accounted for. As with any research project, to ensure precision and accuracy, attribution should be incorporated in footnotes or in an annotated bibliography.

[154] Concerning meeting with the grievor to discuss the water-legislation-research project, Mr. Beaudoin said that at the outset, he indicated to her that he wanted regular meetings to track progress and provide her with an opportunity to ask questions or seek clarification. Although at certain times he was unavailable, he expressed to the grievor that she had every opportunity to meet with him on a scheduled or ad-hoc basis.

[155] The “water level network” was intradepartmental, with representatives from program and policy areas, including regional offices. In his first meetings with the grievor, he had told her that as a senior analyst, she would be responsible for other water-related tasks, in addition to the water-legislation-research project. He had requested that she replace the previous representative from his group to sit in on those meetings, as the role was that of an observer.

[156] In his email to the grievor of February 5, 2015 (Exhibit E-5), Mr. Beaudoin provided comments on the grievor’s “first draft template” of the water-legislation-research project and returned it to her.

[157] The grievor emailed her second draft report on the water-legislation-research project to Mr. Beaudoin on March 3, 2015 (Exhibit E-6). He stated that this version added little to the first draft of December 17, 2014. His comments and those of Ms. Farquharson and Ms. Neamtz had not been incorporated, and the draft lacked an attribution of confirmation of the analysis. Mr. Beaudoin stated that the second draft did not meet the expectations for a legislative overview, as had been assigned in the past to senior policy analysts.

[158] He asserted that a legal background was not necessary to complete the project, as the Legislative Governance Division is not responsible for the legal interpretation of current law. While Mr. Beaudoin holds a law degree, he said that one was not required for policy analysis. Before he arrived in his position, he had no experience with environmental law or related policy. Well-rounded and astute policy advice was

required, which EC-06s, having either legal or scientific backgrounds, have successfully delivered.

[159] In cross-examination, Mr. Beaudoin said that he has never provided legal advice in his capacity as a public servant. He dealt with legislation indirectly, as a policy analyst.

[160] When he was referred to the email of December 18, 2014 (Exhibit G-16), from Ms. MacLellan to Ms. Neamtz and others, indicating that the grievor needed a strong legislative background, and asked whether he was included in “management”, Mr. Beaudoin replied that his responsibilities did not include performance management and HR issues, which were dealt with by a dedicated manager, in this case, Ms. Neamtz. He did not recall whether around December 18, 2014, he discussed the grievor’s qualifications with Ms. Farquharson or Ms. Neamtz. In reference to Ms. MacLellan’s email of December 18, 2014, Mr. Beaudoin understood that it was her view at the time. In his view, a strong legislative background does not refer to explicit academic training in law but could be obtained through normal work on policy issues.

[161] When he was asked whether he had advised the grievor about her behaviour pattern, Mr. Beaudoin said that he shared his concerns with Ms. Neamtz, who often attended his meetings with the grievor; she dealt with HR issues.

[162] When he was referred to his email to the grievor of February 5, 2015 (Exhibit E-5), and to the second bullet, on a shifted focus, Mr. Beaudoin said that he shifted the initiative’s focus from that contained in the grievor’s first draft template on the water-legislation-research project to fresh water in general. He acknowledged in the email that he had taken much of the language from a document prepared by another employee for the policy forum.

[163] When he was asked whether he had informed the grievor that meetings with her were too long, he replied that at the start of each one, he or Ms. Neamtz would advise the grievor of the meeting’s duration.

7. Ms. Neamtz

[164] Ms. Neamtz was a senior manager (classified EC-08) in the Legislative Governance Division from September 2009. She was the grievor’s homeroom manager as of October 15, 2014, when the grievor began working in the Division. Ms. Neamtz

explained that for employees reporting to them, homeroom managers deal with HR, pay, and performance and administrative issues, as well as manage the workload.

[165] Ms. Neamtz met with the grievor on October 15, 2014, for about two hours concerning how to carry out the work and the projects assigned to her. Management (which included Ms. Farquharson, Ms. MacLellan, and Ms. Neamtz) had planned three projects for her, which were (1) the biodiversity project based on her education and experience, (2) the water-legislation-research project, and (3) the fracking project, as an offshoot of the water-legislation-research project.

[166] Ms. Neamtz became involved in the water-legislation-research project when in early November 2014, the grievor produced an outline of the water-legislation-research project to Mr. Beaudoin. He commented on it and then was absent for one week. The grievor went to see Ms. Neamtz, to ask about Mr. Beaudoin's comments and the timelines he had imposed. Ms. Neamtz reviewed the outline and met with the grievor to go over Ms. Neamtz's comments on the outline, which contained Mr. Beaudoin's tracked changes (Exhibit E-7). Ms. Neamtz found the outline unclear, without a list of resources or clear timelines other than February 15, 2015, by which the grievor was to provide the first draft of the report. A document dated November 28, 2014 (Exhibit E-8), was presented as the grievor's second version of the water-legislation-research project outline, with Ms. Neamtz's handwritten comments on it.

[167] The grievor met with management to discuss the first version of the outline of the water-legislation-research project, and they met again about the second version. It did not appear that the grievor had taken into account the comments of Mr. Beaudoin and Ms. Neamtz in preparing the second version. At the meeting, they broke down the project into steps and decided that the focus would be on step 1, the legislative framework. During the meeting, the grievor confirmed that she could not carry out the fracking project. Ms. Neamtz was concerned that after 1.5 months had passed, they were still discussing the outline rather than working on the water-legislation-research project.

[168] Ms. Neamtz provided comments on a third version of the outline for the water-legislation-research project (Exhibits E-9 and E-1, tab 85). It did not meet her expectations for the work. It was unclear how the legislation related to water issues; no issues were outlined, and there were no sources or references. Based on Ms. Neamtz's

experience with similar issues, the project should have taken six weeks. She provided her comments to the grievor in January 2015.

[169] Ms. Neamtz, Mr. Beaudoin, and the grievor met in late January 2015, to discuss the water-legislation-research project. The grievor was defensive about her work and questioned their input. They asked her to provide an updated version of the legislative overview by the end of January. She replied that she could not do it.

[170] The grievor approached Ms. Neamtz a few days later and questioned every comment Ms. Neamtz had made and pushed back on them. She said that the matter was complex and that Ms. Neamtz did not understand the complexity. Ms. Neamtz again asked for another version of the legislative overview by the end of January. The grievor said that she was not able to provide one.

[171] Ms. Neamtz provided handwritten comments on a third version of the legislative overview dated March 3, 2015 (Exhibit E-10). She made the same comments as on the second version, which showed that her earlier comments had not been incorporated. She discussed them with the grievor on March 25, 2015, upon the latter's return from vacation. The grievor was again defensive about the comments. Her assignment was ending, and it was clear to Ms. Neamtz that the work would not be completed by then. Ms. Neamtz never received another version of the legislative overview.

[172] Ms. Neamtz then referred to the request she made of the grievor on November 4, 2014, to "look at what this new environmental code is in Saskatchewan" and to prepare a short summary (Exhibit E-11). She had expected the grievor to learn what the amendments would do and how those amendments would work with Saskatchewan legislation. Ms. Neamtz did not set time frames, as she thought it was fairly simple and could be done quickly. She provided comments on the grievor's original summary dated November 13, 2014 (Exhibit E-12), as well as on the grievor's second version of that summary, dated December 24, 2014 (Exhibit E-13).

[173] Ms. Neamtz said that the grievor did not indicate what the legislation did and that her summary was taken from the Saskatchewan government's website, including comments by opposition members of the legislature and the table of contents. It was essentially a copy and paste of information from that website.

[174] On February 19, 2015, Ms. Neamtz emailed the grievor as a follow-up to their discussion of the previous day (Exhibit E-1, tab 76). She did so because she had a strong sense that oral discussions with the grievor were not being heard and that the grievor resisted discussion about her work. Ms. Neamtz was concerned that the grievor's progress to date had not met her expectations.

[175] On April 2, 2015, Ms. Neamtz met with the grievor concerning her performance evaluation. That day, she had provided an electronic version of the summary as the grievor had requested (Exhibit E-1, tab 80). Ms. Neamtz told her that her performance did not meet expectations and began to go through her comments point by point. The grievor became defensive about her work difficulties, and Ms. Neamtz tried to move the discussion to competencies, but the grievor resisted. Ms. Neamtz replied to the grievor's comments using Microsoft Word's track changes feature (Exhibit E-1, tab 82).

[176] Ms. Neamtz said that the grievor's performance did not meet expectations because she did not meet her objectives. Ms. Neamtz's comments in the "Results achieved" section were based on her observations and dealings with the grievor and were made in consultation with Mr. Beaudoin and Ms. Farquharson.

[177] Concerning her assessment that the grievor did not meet the competencies, Ms. Neamtz said that the Treasury Board has established four competencies for all public servants. Based on the Treasury Board's indicators and her interaction with the grievor, and in consultation with Mr. Beaudoin and Ms. Farquharson, Ms. Neamtz determined that the grievor did not meet the core competencies.

[178] Ms. Neamtz explained that under the new electronic and Internet-based performance management system, if an employee is assessed as not having met expectations, a performance action plan is required for the next fiscal year. As the grievor's assignment was ending in June 2015, a performance action plan was not established for her. Ms. Neamtz did not set objectives for the following year, as the grievor would not be in the Legislative Governance Division.

[179] With respect to her email of November 14, 2014, sent to the grievor and many others concerning an anticipatory staffing process for certain EC-06 positions (Exhibit E-1, tab 78), Ms. Neamtz said that the grievor told her that she did not apply to them and that as an EC-06, she felt that she did not have to apply. The grievor told her this

during a meeting about other positions. Ms. Neamtz provided her with the names of managers to contact and ask if they were filling positions.

[180] Concerning the grievor's training, Ms. Neamtz referred to an email exchange with Ms. Farquharson on August 31 and September 1, 2015 (Exhibit E-14).

Ms. Farquharson had requested that Ms. Neamtz indicate the training provided to the grievor while at the Legislative Governance Division. Ms. Neamtz's email referred to the following: the Canadian Bar Association's National Energy, Environmental and Resource Law Section and Department of Justice Conference (November 6 and 7, 2014); Innovation and Stewardship Conference, Carleton University (March 23 and 24, 2015); and Environment Canada Leadership Architect course. She also stated that the Legislative Governance Division's staff had been trained in information management and performance management.

[181] In cross-examination, Ms. Neamtz testified that although she was a lawyer, she had not practised as one since 1998. She worked as a government relations and communications consultant for 10 years and had occupied her present position since 2009.

[182] On October 2, 2014, Ms. Neamtz attended a meeting with Ms. N. Laframboise and Mr. Moffet to discuss the assignment. In an email to Ms. Bourbonnais on the same day, Ms. N. Laframboise stated that Mr. Moffet and Ms. Neamtz had advised her that the grievor did not have the required legislative background (Exhibit G-7). When Ms. Neamtz was asked whether she recalled advising Ms. N. Laframboise that the grievor did not have the qualifications for working in her group, she replied that the grievor did not, for the assignment she was looking for. Management was seeking someone to hit the ground running to help draft instructions to lawyers about the statute. Concerning the need for a legislative background, Ms. Neamtz said that some analysts in her group were without a legislative background and that the employer had hired individuals without that background, including EC-06s. Ms. Neamtz stated that what Ms. N. Laframboise had said was not correct.

[183] Ms. Neamtz said that the grievor was not given an assignment outside the Legislative Governance Division but that she was given different work. Ms. Neamtz had been told that she would take the grievor and that the Audit and Evaluation Branch

would pay her salary so that the salary for the position could be used to look for someone else.

[184] When she was asked whether she was aware that the grievor did not have a legislative background, Ms. Neamtz replied that the grievor did not have legal training. When she was asked if she arranged training for the grievor on the legal aspect of her assignment before she began working in Ms. Neamtz's team, Ms. Neamtz said that the grievor was provided with the objectives of research and policy. Based on the grievor's résumé, the grievor highlighted that she had past experience in hydrology.

[185] Ms. Neamtz referred to the third and fifth bullets in the professional profile section of the grievor's résumé. The third bullet stated, "24 years of experience in research, project management and consulting in the environmental field", and the fifth bullet stated, "experience with regulatory reviews". Ms. Neamtz said that based on her résumé, management felt that it did not give the grievor any work she had not done before.

[186] When she was referred to an email of December 18, 2014, to her and others from Ms. MacLellan (Exhibit G-16) indicating that the grievor needed a strong legislative background, Ms. Neamtz said that she did not write it. The grievor was not given work that required a legislative background, and at that point, Ms. Neamtz was struggling with the lack of progress on the project. She said that employees without a legislative background had joined the Legislative Governance Division and had performed well. I note that no evidence was presented concerning the types of projects assigned to such employees.

[187] The grievor was provided with documents concerning the minister's mandate and plentiful information on the basics, and Ms. Neamtz offered to explain legislation under her area of expertise. Ms. Neamtz was responsible for legislation concerning species at risk and several times offered to discuss with the grievor how that legislation worked but was never taken up on her offer.

[188] When it was suggested to Ms. Neamtz that the grievor asked for the names of managers, with respect to employment opportunities, and that she contacted some of them, Ms. Neamtz replied that she had contacted some of those managers and that they had informed her that the grievor had not contacted them. Ms. Neamtz said that

an EC-06 can find a position by networking or by applying to a process and that at-level deployments are also possible.

[189] Ms. Neamtz asserted that in December 2014, she told the grievor that the water-legislation-research project outline should take six weeks and that she gave the grievor an example of a comparable project, which another employee in the section had completed in two weeks. Ms. Neamtz also stated that on January 21, 2015, she told the grievor that her work was not what Ms. Neamtz expected.

[190] Ms. Farquharson informed Ms. Neamtz of the two-month extension to the grievor's assignment, to June 16, 2015. Ms. Neamtz assessed the grievor's performance for 5.5 months because as of the assessment, it was to end on April 15, 2015. Ms. Neamtz acknowledged that the grievor was absent part of that time due to vacation, sick leave, and a family emergency.

[191] With respect to her January 7, 2015, email to Ms. Farquharson concerning the grievor's performance agreement (Exhibit G-17) and the phrase she wrote, "leave it more vague", Ms. Neamtz said that she assumed that when she wrote it, she was referring to the objectives, indicators, and results they had set for the grievor. They left it more vague than usual because the grievor did not agree to the language used to specify the objectives.

[192] Ms. Neamtz had no part in the decision to terminate the grievor's employment.

8. Mr. D'Aoust

[193] Mr. D'Aoust has been the director general of Environment Canada's Audit and Evaluation Branch since June 2011. From 2008 to 2011, he was the director general of finance. His responsibilities include three business lines, which are assessing the effectiveness and relevance of programs (the evaluation component), internal audits, and facilitating liaisons with external auditors.

[194] Mr. D'Aoust stated that the first-level response to the grievor's harassment grievance, rendered on September 27, 2013 (Exhibit E-1, tab 52), committed management to deploy efforts to help her find other employment and required her participation in the process. Mr. D'Aoust personally undertook efforts in this respect. In an email to Mr. D'Aoust of September 30, 2013, Patrick Laplante, a labour relations advisor, set out certain discussion points concerning a follow-up to the harassment

grievance that management wished to raise in its upcoming meeting with the grievor (Exhibit E-1, tab 53). These discussion points included the efforts management would deploy to relocate the grievor, the continuation of her performance management plan, the re-establishment of her supervisory link, and the suggestion that she contact the Employee Assistance Program and take leave.

[195] Mr. D'Aoust contacted David Boerner, the director general in the employer's Science and Technology Branch, as he thought that based on the grievor's résumé, she would be a good fit. He told Mr. Boerner that he had an employee looking for a different career opportunity and that his branch would pay the grievor's salary for one year (Exhibit E-15). Mr. Boerner replied that he did not have immediate availabilities but that he would accept the grievor's résumé, for future consideration. He suggested that Mr. D'Aoust contact Kevin Cash and David Morin, both senior managers in his branch. Mr. D'Aoust was uncertain whether he followed up with Mr. Cash, as Mr. Cash did not work in Ottawa. He did contact Mr. Morin, who said that he did not have any opportunities. Mr. D'Aoust spoke with that branch's assistant deputy minister about placing the grievor there (Exhibit E-1, tab 54) and undertook other efforts to place her in another area (Exhibit E-1, tab 55). He did not specify those other efforts.

[196] In his letter to the grievor of October 3, 2014, concerning her return to work (Exhibit E-1, tab 61), Mr. D'Aoust informed her of the six-month Legislative Governance Division assignment and stated that she should pursue other opportunities for a longer-term solution. His letter rejected that the employer had a duty to provide her with an accommodation and stated that she had no functional limitations.

[197] With respect to his experience with the grievor, Mr. D'Aoust recalled that in November 2013, she completed a draft report on the protected-areas-strategy evaluation project, which was sent to him for comment. He met with her and Mr. Blois that same month, and he instructed her that a number of issues had to be corrected. That meeting occurred about three or four weeks before the departmental evaluation committee meeting scheduled for December 17, 2013, at which the report would be discussed.

[198] In his view, the corrections should have taken only a few days to make, and while the grievor had ample time, she was unable to make them satisfactorily. As Mr. Blois had to make them, the document, which was normally submitted one week

before the departmental evaluation committee meeting, was submitted late. Furthermore, Mr. Blois could not make all the corrections. This made the departmental evaluation committee's clearance of the report more difficult than usual. However, I note that Mr. Lemieux testified that the departmental evaluation committee made only a few revisions and that he thought that the meeting had been positive.

[199] Mr. D'Aoust said that at the meeting, the grievor did not display the expected tact, as she spoke over an assistant deputy minister to make a point, which caused some awkwardness.

[200] Mr. D'Aoust recommended terminating the grievor's employment in consultation with HR, Labour Relations, and the senior managers involved. His main reasons were her long-standing record of poor performance and her difficulty meeting the functional and core competencies required of all public servants. He also noted that throughout the period assessed, there was no notable improvement in her performance. I note that Ms. Farquharson testified that the grievor was not on a performance action plan during her assignment to the Legislative Governance Division.

[201] Mr. D'Aoust stated that as the grievor did not acknowledge that she had to improve her performance, it was management's view that there was little likelihood that her performance would improve or that she would succeed in another job. As of the termination, 4.5 years of performance issues had elapsed, during which Environment Canada had made considerable efforts to help the grievor. Mr. D'Aoust said that all managers who had worked with the grievor had the same appreciation of her performance.

[202] In cross-examination, Mr. D'Aoust said that he relied on HR concerning the policy of separating the parties to harassment complaints. In relation to the email he received from Mr. Blois on May 29, 2012 (Exhibit E-1, tab 11), concerning the grievor reporting to Mr. Lemieux, he stated that he did not know whether he had directed Mr. Blois to tell Mr. Lemieux and the grievor about the reporting relationship. Mr. D'Aoust did not recall whether Mr. Blois continued to have input on the grievor's performance and on managing her workload after she began reporting to Mr. Lemieux. Mr. D'Aoust said that the only issue was the grievor's performance appraisal during the period Mr. Blois supervised her.

[203] Mr. D'Aoust acknowledged that during a meeting on October 9, 2013, with the grievor and Mr. Rochon, he said that he would tell other managers that the grievor presented a fit issue. He said that he had mentioned fit diplomatically when he spoke with his contacts and that it is recognized that employees may wish to change jobs for any number of reasons other than job performance.

[204] Mr. D'Aoust said that the search for another position for the grievor began with the Science and Technology Branch because it seemed the best fit. The search was put on hold due to her sick leave, and it resumed around the time of the Health Canada letter in September 2014. On HR's advice, management sought a better definition of functional limitations to properly accommodate her. He had not seen Dr. Harrison's letter of April 29, 2014 (Exhibit E-1, tab 44).

[205] Mr. D'Aoust stated that Dr. Harrison was not in a position to assess the grievor's work environment; her opinion was based on what the grievor had told her. Management felt that more detail was needed, and HR decided to refer the grievor to Health Canada. As to whether Health Canada's recommendations were essentially the same as those of Dr. Harrison, Mr. D'Aoust said that according to HR, Health Canada's recommendations were clearer.

[206] With respect to the events before the departmental evaluation committee meeting in December 2013, Mr. D'Aoust said that he was unaware that at that time, the grievor was under emotional stress and that Mr. Lemieux was concerned about it. He said that he did not recall being aware of a situation that was out of the ordinary. He did not recall whether the grievor's report to the departmental evaluation committee had been partially approved or not approved but that much of the problem could have been avoided had she done the job on time.

[207] Mr. D'Aoust agreed that the decision to terminate the grievor's employment was based partly on her performance evaluations. When it was pointed out that the 2011-2012 evaluation (Exhibit E-1, tab 33), which was one of the documents he relied on in making his recommendation to terminate her, indicated that one objective was not fully achieved and that another one was fully achieved, he said that that concerned only two objectives. He said that he also spoke with Mr. Lemieux, Mr. Blois, and Ms. Farquharson. Mr. Moffet provided Mr. D'Aoust with a summary of those conversations.

[208] With respect to the final evaluation for 2012-2013 (Exhibit E-1, tab 32), Mr. D'Aoust said that there were some improvements and some failings in the grievor's performance. He noted that the evaluation was dated September 2013 and that his assessment was done in 2015.

[209] While Mr. D'Aoust acknowledged that the 2011-2012 evaluation did not mention core competencies, he did not think that they were identified as objectives; nor did he think that the assessment of the grievor's performance was based only on her performance appraisals.

[210] Mr. D'Aoust also acknowledged that the grievor's evaluation for 2012-2013 did not refer to the core competencies. He did not know whether management had discussed them with her, but he said that such discussions are also part of the performance assessment process.

[211] Mr. D'Aoust had minimal involvement with the grievor's placement in the Legislative Governance Division, as it was arranged through HR.

[212] Concerning the grievor's difficulties with Mr. Blois, Mr. D'Aoust said that she had difficulties with co-workers and clients that had nothing to do with Mr. Blois.

[213] With respect to Ms. N. Laframboise's email to Ms. Bourbonnais of October 2, 2014, stating that the grievor did not have the legislative background required for an assignment to the Legislative Governance Division (Exhibit G-7), Mr. D'Aoust did not recall whether Ms. N. Laframboise briefed him about a discussion with Mr. Moffet. At the time, he was unaware of the responsibilities the grievor would have and the duties she would carry out at the Legislative Governance Division.

[214] Mr. D'Aoust became aware of the grievor's lack of qualifications only later in the process when her assignment neared completion. When he was referred to the phrase "legislative background" in Ms. MacLellan's December 18, 2014, email, Mr. D'Aoust said that he was not involved at the time. After the grievor left the Audit and Evaluation Branch, he was not involved and did not recall being aware of a concern with her lack of qualifications at the beginning of her assignment.

[215] When he was asked whether he was aware that the grievor was not on a performance action plan while she was assigned to the Legislative Governance Division, Mr. D'Aoust said that he relied on information from Mr. Moffet's group for

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

the memo to the deputy minister. He recalled that objectives had been set for the grievor. He did not know if the deputy minister was informed of her lack of qualifications.

[216] When he was asked whether the deputy minister was informed of the grievor's improvements while in the Audit and Evaluation Branch, Mr. D'Aoust replied that the improvements occurred 1.5 years before the memo to the deputy minister was written and stated that while there might have been improvements, there was also degradation. He said that the events that led to Mr. Blois issuing a disciplinary letter to the grievor with respect to allegations made against her (Exhibit G-6) were indicative of the core competency of working well with others.

[217] Concerning training, Mr. D'Aoust said that generally, the grievor could request it of management. He recalled discussing with Mr. Blois the importance of offering training and coaching on core competencies, and he did not know if the grievor accepted some. He did not know whether Mr. Blois offered her coaching, although Mr. Blois reported that he had done so. His feedback from Mr. Blois was that the grievor was not really interested in coaching.

[218] Mr. D'Aoust did not return the grievor to the Audit and Evaluation Branch at the scheduled end of her assignment to the Legislative Governance Division because he needed time to digest the performance issues. It was not useful to bring her back for a short period as he was already thinking of the next steps. The results from the Legislative Governance Division placement dispelled the idea that the cause of the grievor's poor performance was the Audit and Evaluation Branch or a particular manager.

B. For the grievor

1. Dr. Gilles Hébert

[219] Dr. Gilles Hébert is a clinical psychologist who conducts independent psychological assessments (Exhibit G-21, tab 26). He was qualified as an expert in clinical psychology on the employer's consent.

[220] Upon a referral from Health Canada, he conducted an independent psychological evaluation of the grievor in the summer of 2014, and his report is dated September 11, 2014 (Exhibit G-21, tab 25). As his report contains the grievor's contact

information as well as sensitive medical information about her and her family, I will order this exhibit sealed as will be explained later in this decision.

[221] While referring to his report, Dr. Hébert stated that his understanding of the grievor's situation was that matters deteriorated in February 2011 after she began working with a new supervisor. In August 2014, she exhibited no signs of psychological pathology with respect to either clinical disorders or personality issues. She was stable.

[222] Dr. Hébert's diagnosis was that the grievor had no clinical or personality disorders. Her symptoms were minimal to non-existent. His prognosis for her was good, if she could work somewhere else.

[223] Dr. Hébert referred to Dr. Harrison's letter of April 29, 2014 (Exhibit E-1, tab 44), specifically the last paragraphs on the first and second pages. He stated that his conclusion was the same as that of Dr. Harrison. He agreed with Dr. Harrison that the grievor was fit to return to work full-time on a gradual basis over two to four weeks. Dr. Hébert did not think that the grievor's relationship with her supervisor could be rebuilt.

[224] In cross-examination, Dr. Hébert was referred to a particular section of his report, which discusses the grievor's mental health in detail. Given that I will order this document sealed and that his testimony on this issue is not relevant to my decision, it is sufficient to say that he concluded that the grievor did not have a disorder.

[225] When he was referred to his reference to the grievor's "suspicious and defensive style", Dr. Hébert believed that she was concerned about the impact of his report. Concerning the phrase, "she cannot trust them any more", he said that "them" referred not only to the grievor's supervisor; he assumed that there had to be something else, such as the work environment, to which he had referred in his report. The grievor felt that the supervisor talking behind her back influenced some of her co-workers. Dr. Hébert understood that the supervisor was causing her symptoms.

[226] When he was asked what he meant by changing the grievor's reporting structure, Dr. Hébert replied that that was his opinion, which he had recommended to Health Canada, and that he does not know what Health Canada recommends to the employer.

[227] Dr. Hébert recommended that the grievor report to a different person. If she got along with another supervisor, he would not expect her symptoms to deteriorate.

2. Mr. Rochon

[228] At the relevant time, Mr. Rochon was a labour relations officer with CAPE. He has lengthy experience as a union official. He took over the grievor's file from a colleague who left CAPE.

[229] Mr. Rochon first met with the grievor on January 23, 2012. They discussed her difficulties and the available recourses. He suggested that she think about filing a harassment complaint, which she did in February 2012 (Exhibit G-22, contained in Exhibit E-1, tab 12). A facilitated discussion between the grievor and Mr. Blois never occurred, as she did not sign the agreement to hold one (Exhibit G-21, tab 8).

[230] Mr. Rochon had several email exchanges with Ms. M. Laframboise concerning the harassment complaint (Exhibits G-11, G-12, and G-13). One of the concerns was separating the parties during the complaint's investigation. Mr. Rochon left Mr. D'Aoust a voicemail on Friday, May 25, 2012. Mr. D'Aoust said that he would suggest a solution, to be implemented the following week. Mr. Rochon and the grievor exchanged emails concerning the reporting structure (Exhibit G-21, tab 9) and the separating of the grievor and Mr. Blois (Exhibit G-21, tab 10). Mr. Rochon suggested to Ms. M. Laframboise that the grievor report to Mr. D'Aoust, but she said that because he was the director general, he was too busy.

[231] Mr. Rochon referred to his email exchange with Ms. M. Laframboise in July 2012 (Exhibit G-13), in which she said that Mr. Blois would not be involved in evaluating the grievor. Mr. Rochon was concerned because Mr. Lemieux reported to Mr. Blois.

[232] After they received a copy of the final investigation report, Mr. Rochon recommended that the grievor file a grievance against it.

[233] The grievor's 2011-2012 performance evaluation was not finalized until December 4, 2013. On that day, she and Mr. Rochon attended a meeting concerning what was referred to as a performance-action-plan update. One of the issues was her completion of certain tasks. The conversation was tense, and the grievor found it stressful. During the meeting, Mr. Blois made an inappropriate comment to her, remarking that while she claimed she did not have time to perform her work, she

nonetheless spent time filing grievances. On December 17, 2013, Mr. Rochon emailed Mr. Blois about it (Exhibit G-21, tab 22).

[234] In November 2013, Mr. Blois initiated a disciplinary fact-finding process against the grievor. He raised allegations against her that other employees had made and added his own. A disciplinary letter was issued to her (Exhibit G-6).

[235] Mr. Rochon found it unsettling that Mr. Blois contacted the grievor at home during her sick leave.

[236] Mr. Rochon and the grievor attended a meeting on April 2, 2014, along with Ms. M. Laframboise and Mr. Silva (Exhibit G-14). The purpose was to advocate for a more supportive work environment for the grievor. Nothing concrete developed. Ms. M. Laframboise spoke of the grievor's performance and stated that no one wanted to work with her. A grievance was filed alleging that the employer failed to accommodate the grievor (Exhibit G-1).

[237] Mr. Rochon said that the grievor's concern with the Health Canada process was the employer's interpretation of events in its letter to Health Canada.

[238] Mr. D'Aoust's letter to the grievor of October 3, 2014, informed her of the six-month Legislative Governance Division assignment (Exhibit E-1, tab 61). Mr. Rochon said that there was no discussion with Mr. D'Aoust or anyone else as to whether the assignment was suited to the grievor's qualifications. Mr. Rochon recalled her telling him that she felt that she did not meet one of the qualifications for the job, namely, a legal qualification.

[239] Mr. Rochon attended the June 12, 2015, meeting at which the grievor's employment was terminated. He said that they knew that the employer had concerns with her performance. During the meeting, Ms. M. Laframboise said that the employer had put effort into improving her performance. When Mr. Rochon told her that no performance action plan was in place during the assignment to the Legislative Governance Division, she replied that several had been put in place over the years.

[240] In cross-examination, Mr. Rochon said that the separation of the grievor and Mr. Blois was not as clear-cut as he had thought it would be. When he was referred to his email of May 30, 2012, to the grievor recounting his meeting with Ms. M.

Laframboise (Exhibit G-21, tab 9), during which she indicated that Treasury Board
*Federal Public Sector Labour Relations and Employment Board Act and
Federal Public Sector Labour Relations Act*

policy did not mention separating the parties to a harassment complaint, he replied that in his experience, separation is beneficial.

3. The grievor

[241] The grievor was working as an environmental manager in another department when she was given the name of Ms. Borys, the employer's director of evaluation. The grievor approached her, and Ms. Borys requested her résumé. She was called for an interview, which Ms. Borys, Mr. Blois, and others attended.

[242] The grievor began working for the employer on November 22, 2010, reporting to Ms. Borys. Two weeks after the grievor was hired, Ms. Borys told the grievor that she was leaving Environment Canada and that Mr. Blois would be the director of evaluation on an acting basis. Once Ms. Borys left at the end of 2010, the grievor reported to Mr. Blois.

[243] Ms. Borys had assigned the grievor four projects: to be the team lead on a horizontal evaluation of a green-procurement policy, to be led by PWGSC; to be a team member and peer reviewer of a waste reduction and management plan; to be a member of a team dealing with services to marine transportation; and to be a member of an evaluation framework, which had not begun. They were included in a list of her accomplishments from November 22, 2010, to March 31, 2011 (Exhibit G-21, tab 3), which she provided to Mr. Blois on May 11, 2011.

[244] Mr. Lemieux was the lead on the marine transportation file, and he assigned tasks to the grievor. Mr. Blois was the lead on the waste-management file, and he assigned her tasks. She could not plan her work because tasks were assigned to her as they arose. For example, she had to translate an evaluation report, which Ms. Borys had not assigned to her.

[245] In January 2011, Mr. Blois assigned the grievor the protected-areas-strategy evaluation project and asked her to select a co-op student for that year.

[246] With respect to her meeting with Mr. Blois on February 23, 2011, the grievor said that it dealt with the protected-areas-strategy evaluation project. For one example he gave, she told him that she would check her notes. It concerned a waste-management project for which he had given her the evaluation plan to condense and clarify. Although he did not give her timelines to complete it, he told her that it had

taken her two months. She began that work, but then Mr. Lemieux and others asked her to undertake other tasks. She told Mr. Blois about it, and he agreed that his assignment could wait. When she checked her notes, she found that she had completed it in half the time Mr. Blois had said it had taken her, and she had kept him posted on her progress. Her weekly progress reports set out what she had performed in the last two weeks and her activities planned for the next two weeks.

[247] The grievor met with Mr. Blois on March 2, 2011, and told him that she had completed his assignment in one month, and she asked him for his priorities.

[248] On March 4, 2011, Mr. Blois entered the grievor's cubicle at 4:30 p.m. He apologized for the conversations of February 23 and March 2 and told her that he knew that she was working very hard and that she was giving 110%. He told her that she was pleasant to work with and that he liked working with her. He acknowledged that he should perform a coaching role and said that he would renew her EC-07 role on an acting basis for four months from April 1, 2011.

[249] Concerning Mr. Blois's email of March 21, 2011, to HR about the grievor's unsatisfactory performance (Exhibit E-1, tab 3), she said that she was unaware of it as she had been on annual leave.

[250] The grievor said that on May 11, 2011, she provided Mr. Blois with a list of her accomplishments from November 22, 2010, to March 31, 2011 (Exhibit G-21, tab 3), but that he never commented to her about it. She stated that nobody had given her objectives for 2010-2011; nor was she given a performance appraisal for that period.

[251] On June 14, 2011, the grievor and Mr. Blois met to review her performance. She said that like their conversation on March 4, 2011, the review was positive. He told her that she was hard-working, paid attention to detail, gave 110%, and cared about her job. He said that as an area of improvement, he found her approach to projects too cautious. There were no other conversations with Mr. Blois concerning her performance until November 23, 2011.

[252] During the summer of 2011, a meeting was held about the protected-areas-strategy evaluation project and attended by Mr. Blois and his counterpart and the grievor and her counterpart. After the meeting, she told Mr. Blois that the stakeholders had not committed to what had been agreed to, which was whether the evaluation

would be done jointly with the other department or separately. Mr. Blois became very aggressive and said that she would mention only risks with the project. Sometimes he held meetings without her, and she would learn about them afterwards.

[253] Mr. Blois was becoming aggressive and made belittling comments to her. That attitude became more frequent during the summer. The grievor tried to speak with him and suggested that they discuss it at another time, but he never took her up on it. In the fall of 2011, she spoke to her union about it. The union advised her to file a harassment complaint against him, which she was reluctant to do.

[254] In mid-August 2011, the grievor and Mr. Lemieux discussed the issues with the co-op student she had selected. He provided some criticism, and she commented. He said that the university had informed him that it had been the student's first co-op placement and that the student had to make adjustments. As Mr. Lemieux told the grievor that he would tell Mr. Blois that he was comfortable with what she had done, she felt that there was no issue. She asked to be copied on any emails or enclosures as part of any discussion about the matter but never was.

[255] Mr. Lemieux never spoke to the grievor about issues with an EC-04.

[256] On November 23, 2011, the grievor went to her mid-year performance review prepared to address her performance against the objectives in her performance management agreement for 2011-2012 (Exhibit G-25). Mr. Blois spoke about the time-recording-system data, said she spent too much time on administrative tasks, and gave a few examples of that. All his feedback was based on time-recording-system data. Up to then, employees had been told that the time-recording-system was for planning purposes, and everyone had been specifically informed that it was not for performance evaluation. The grievor asked Mr. Blois to review the data. It was the first time he had mentioned time-recording-system data to her.

[257] Mr. Blois made vague statements about receiving complaints about the grievor. When she requested details, he said that they were confidential. He did not identify the complainants, the nature of the complaints, or when they had been filed. He told her that if he received any more complaints, he would take disciplinary action. He had not previously mentioned complaints to her.

[258] The meeting reconvened on November 24, 2011. The grievor told Mr. Blois that she could not address issues about which she had no knowledge. He again refused to discuss the complaints, citing confidentiality. He also referred to the co-op student's complaint. The grievor was surprised by that and told him that Mr. Lemieux had discussed the matter with her, had told her that it was not an issue, and had told her that he would so inform Mr. Blois. He did not seem to know what she was talking about and presented a story different from what Mr. Lemieux had told her.

[259] Mr. Blois told the grievor that he would develop a performance action plan and led her to believe that she would be involved in its development. There were no documents pertaining to the November 23 and 24, 2011, meetings, and Mr. Blois's criticisms were not linked to the grievor's objectives in her performance management agreement.

[260] The grievor received no training on the time-recording-system and learned it by trial and error. She said that there were errors in the data, that it was sometimes duplicated, and that it was known that employees did not enter their time consistently. Sometimes a project had two codes, and employees made entries under different codes. The grievor pointed out that her time-recording-system entries had duplicates for June 20, 21, 22, and 23, 2011. She also stated that while Mr. Blois had said that she had spent three days on a matter, her review of the time-recording-system showed that she had spent nine hours on it. When she told him that the data had errors and offered to show them to him, he replied that he knew what was in the data.

[261] At a meeting on January 4, 2012, Mr. Blois gave the grievor a performance action plan. She had not been involved in its development. She tried to explain to him that she had reservations about the time-recording-system data and that she had received no information about complaints against her, to address them, but he was not willing to listen to her.

[262] The grievor found the performance action plan vague, with nothing to indicate how she was to progress. As for establishing timelines, she said that she was already doing so in her progress reports. Concerning "Flexibility/adaptability", Mr. Blois did not provide examples. For "Suggesting innovative ways", the grievor asserted that she was doing so. The performance action plan contained no suggestions for improvement and no mention of training.

[263] The grievor was asked whether Mr. Blois had ever asked her to put more information into her progress reports, and she said that he told her that she was spending too much time on administration. She thought that he included tasks not related to a project as administration, not just the time-recording-system. She said that he had increased her workload, which meant an increase in administration.

[264] The grievor stated that Mr. Blois's email to her of January 19, 2012 (Exhibit E-1, tab 7), indicating that it was his duty as the director of her division to take steps to address her performance when it did not meet the required standards, was not factual and that his assessment of her performance was not evidence-based. She did not have information about the complaints. Concerning his comment that she "steadfastly refused to acknowledge", the grievor said she did not so refuse; she did not have the data. Mr. Blois prevented her from providing input on her appraisal or the performance action plan. As for her "disinclination to participate", the grievor said that it was false. Concerning her biweekly reports, she did not recall him referring to them in the performance action plan.

[265] On January 17, 2012, the grievor met Mr. Blois in a hallway and told him that she could not address all his comments (Exhibit E-1, tab 7) due to urgent projects.

[266] The grievor and Mr. Blois met on February 15, 2012, concerning the performance action plan. She said that the meeting lasted 10 minutes and that Mr. Blois gave her very positive feedback. He told her that she had met very tight timelines and that she had worked hard. His only negative comment was that she had gone to see Mr. D'Aoust, which he viewed as a challenge to his authority. She told him that she had a specific financial question and that Mr. D'Aoust was a financial expert.

[267] Between December 2011 and February 15, 2012, the grievor was not provided any training or coaching concerning her performance deficiencies identified by management; nor was training or coaching mentioned in the performance action plan.

[268] On April 2, 2012, Mr. Blois emailed the grievor, inviting her to a facilitated discussion with her colleagues (Exhibit E-1, tab 10). Before accepting, she contacted the mediator and asked what the alleged complaints were about.

[269] When the mediator did not provide any information, she agreed to the discussion on the understanding that she would be told of the situation before the

mediation, to which the mediator agreed. At a pre-mediation discussion, the mediator told her that she would have to discuss all her concerns about Mr. Blois. She was uncomfortable with that and did not agree with two paragraphs in the mediation agreement. When she informed the mediator of her concerns, he showed no flexibility. She contacted Mr. Rochon, who agreed that she should not proceed with the facilitated discussion. The grievor did not understand why the employees who had issues with her were not part of the facilitated discussion.

[270] On May 29, 2012, the grievor was called to a meeting with Mr. Blois and Mr. Lemieux (Exhibit G-21, tab 9) during which Mr. Blois told her that she would report to Mr. Lemieux during the investigation of her harassment complaint. She was upset that Mr. Lemieux was aware of the complaint as he was a colleague, and since he reported to Mr. Blois, she was concerned about Mr. Lemieux's objectivity.

[271] Concerning the assessment of her performance, Mr. Lemieux told the grievor that Mr. Blois was providing feedback to him (Exhibit E-1, tab 26A). Mr. Blois had given his feedback to Mr. Lemieux before the grievor had provided her input for the year.

[272] The grievor met with Mr. Lemieux on September 27, 2012, to discuss her performance for the 2011-2012 year and to prepare her objectives and learning plan for 2012-2013. Mr. Lemieux followed the same format as had Mr. Blois in her mid-year review meeting of November 23 and 24, 2011. The assessment was still based on the time-recording-system data, to which she had not been given the opportunity to point out errors. Mr. Lemieux did not provide details about the complaints against her made by the EC-04 or the co-op students. She became aware of a complaint by a second co-op student through an ATIP request. She and Mr. Lemieux exchanged emails about the performance-review meeting, at which she requested details concerning the complaints (Exhibit G-26, contained in Exhibit E-1, tab 27). Those details were never provided to her.

[273] Mr. Lemieux signed the grievor's performance appraisal for 2011-2012 on October 17, 2013 (Exhibit E-1, tab 33). She testified that he had not finalized her performance agreement for 2011-2012 but rather had provided her with a document that he had titled, "overview of performance" (Exhibit E-1, tab 29). She considered the final version of her 2011-2012 performance evaluation the one she had received in

December 2013. It did not mention interpersonal issues, which Mr. Lemieux said he would not address (Exhibit E-1, tab 30); nor did it mention a performance action plan.

[274] The grievor said that in her meeting with Mr. Lemieux on December 13, 2012, there was no discussion of the performance action plan (Exhibit E-1, tab 30), and she did not recall receiving the performance action plan (Exhibit E-1, tab 31) from him.

[275] Concerning the matter of the grievor having issues with a new contracting or procurement process that had been implemented, she said that it was a new process for materiel management that had been implemented throughout the government. She developed terms of reference for a contract and had to familiarize herself with the process to determine the best vehicle for it. She completed the documentation, which Mr. Blois approved, and sent it to the materiel management branch, which told her that it did not approve the selection criteria. She then adjusted it, according to the feedback. The person she dealt with at materiel management left for five weeks, and the new contact she had been referred to was on leave. The contract ultimately went through, but she had no control over delays at materiel management.

[276] With respect to Mr. Lemieux having an issue with the length of her biweekly reports, the grievor said that Mr. Blois had asked her to provide more detail. When Mr. Lemieux became her supervisor, he told her that they were lengthy but did not ask her to change that.

[277] The grievor said that she could communicate better with Mr. Lemieux than with Mr. Blois, who criticized her and become aggressive when she tried to convey to him the risk to a project. That did not happen with Mr. Lemieux.

[278] The grievor stated that she never had a meeting with Mr. Lemieux concerning a performance action plan. While he supervised her, she did not receive coaching or training. Neither Mr. Lemieux nor, previously, Mr. Blois raised the issue of her core competencies.

[279] Concerning the grievor's harassment complaint, the investigation report dated February 23, 2013, was provided to her on April 11, 2013, by Mr. D'Aoust. He told her that her reporting relationship with Mr. Blois would resume but that a meeting would be held before it happened. She said that no such meeting was held. The first notice she received about the reporting relationship was on May 29, 2013 (Exhibit E-1, tab 15).

[280] The grievor testified that in May 2013, she and Mr. Rochon had a meeting with Ms. M. Laframboise, during which the grievor expressed concerns with the investigation report. She asserted that Ms. M. Laframboise acknowledged that the grievor was working in a hostile environment, from which she should be removed. The grievor said that she offered to market herself.

[281] On August 30, 2013, the grievor received an email from Mr. Blois about their reporting relationship (Exhibit G-21, tab 12), to which was attached a performance action plan (Exhibit E-1, tab 16A). She said that the performance action plan contained only a few changes to the one that Mr. Blois had used in the winter of 2011. There were now dates on the performance action plan, which were September 1, 2013, to February 2014, while the last performance action plan had had none.

[282] The grievor was taken aback by the comment on the bottom of page 1 of the performance action plan about flexibility and adaptability. Concerning the reference to, “Based on recent incidents ...” on page 3 of the performance action plan, the grievor said that it had been in a different column on the previous plan. When she received the performance action plan in August 2013, she was not aware of any incidents.

[283] Concerning her working relationship with Mr. Blois after it resumed, the grievor said that his aggressive behaviour intensified. If she sought support for risks to or challenges with the project, none was provided. If she sought clarification on the performance action plan, he would say that it was clear. He would tell her that she did not ask enough questions about a matter and then would tell her that she asked too many questions. If she performed a task that he had approved and almost completed it, he would tell her that it was not what was required and that she had to do it over.

[284] On September 27, 2013, the grievor had a one-hour meeting with Mr. Blois concerning the performance action plan. She said that his criticism was still vague and that he provided no examples of what she had not done properly or how she could achieve what he wanted. He provided data she had not seen before, so she could not respond to it. He handed her a document (Exhibit E-1, 16A, fifth page) and asked her to comment on it. It went back to April 2012, and she could not recall it.

[285] As at all performance-action-plan meetings, Mr. Blois wanted an immediate response, except for the February 15, 2012, meeting, at which he had positive comments about her work. If the grievor said that she had to look at her data to

respond to something, Mr. Blois dismissed it. When she asked whether including certain items in the performance action plan that she was already doing meant that she was not doing them, Mr. Blois replied, "Not necessarily." At one point, when she asked him to slow down, he said, "I'm not providing you with a recording." He was aggressive and not constructive.

[286] At the performance-action-plan meeting of October 28, 2013, the grievor said that Mr. Blois provided vague criticism. She could not respond to specific dates because she could not recall them. She did not have the ability to respond to the criticism and had no idea what he expected of her.

[287] A performance-action-plan meeting took place on December 4, 2013, attended by Mr. Blois, Mr. Laplante, the grievor, and Mr. Rochon. The grievor said that Mr. Blois presented vague criticism and that he had data to which she could not respond because he had not previously shared it with her.

[288] One item concerned a task that he had asked her to perform, which had taken her five days. As that did not seem correct, she said that she would check her notes, as she thought he had counted a weekend. Mr. Blois disagreed, and when Mr. Laplante checked the calendar, the weekend had been counted in the five days. The grievor stated that such exaggeration of figures was how Mr. Blois criticized her during the time she reported to him. She told him that she was swamped with work because she was working on a presentation to the departmental evaluation committee for December 17, 2013. He then said that she had time to work on grievances, which he mentioned twice during the meeting. She replied that she had worked on them on her own time.

[289] Concerning her health and family situation in the fall of 2013, the grievor said that the harassment investigation and report had tired her out. Her working relationship with Mr. Blois worsened; he reduced the timelines on a procurement project. She had performed a contract amendment that Mr. Lemieux had approved in August 2013. The day that Mr. Blois returned, she was told that he had put the contract on hold after it had been sent to material management. He also reduced by two months the timeline for work to be presented to the departmental evaluation committee. She said that she had a contractual agreement to perform work within set timelines, with some leeway.

[290] The grievor said that all this added stress, including the fact that no meeting was held before she resumed her reporting relationship with Mr. Blois, the aggressive performance-action-plan meetings, and the attempt to finalize her 2011-2012 performance appraisal. Ms. M. Laframboise gave the grievor her 2012-2013 performance appraisal on August 8, 2013. She and the grievor signed it on September 20 and 27, 2013, respectively (Exhibit E-1, tab 32).

[291] The grievor said that she had difficulty sleeping and functioning, that she began losing things, and that she began to fall down. She had to care for elderly parents, of which Mr. Blois and Mr. Lemieux were well aware. She was overwhelmed and felt that she was a human wreck.

[292] At a meeting on October 9, 2013, the grievor told Mr. D'Aoust that she was exhausted. When he told her that a long weekend was coming up and that she could take a couple of extra days that would not be debited from her leave account, she said that she could not because of timelines in the departmental evaluation committee project milestone, which Mr. D'Aoust said could not be changed. When she said that she was between a rock and a hard place, Mr. D'Aoust told her to stop playing the victim.

[293] The grievor asserted that between September and December 2013, she did not receive coaching, no issues were raised concerning her core competencies, and she was not given any warning that if her performance did not improve, her employment would be terminated.

[294] Concerning her health, the grievor said that she had several symptoms, including interrupted sleep, the loss of her voice, and a burned-out feeling. She sought medical attention on December 31, 2013. Dr. Harrison told her that she could not return to that workplace and provided a medical certificate (Exhibit G-27, at Exhibit E-1, tab 35). As the grievor was on leave until January 7, 2014, she asked Mr. Rochon to submit the certificate to the employer, which she believed he did on January 6, 2014 (Exhibit G-6).

[295] Before the grievor heard from Mr. Rochon, Mr. Blois called her at home in the afternoon of January 7, 2014. He told her that he could not accept the note as no reassessment date was specified, and the doctor did not know about the work environment. He also told her that the doctor should identify any limitations, if and

when she returned to work. That comment surprised and distressed her because to her, it was not a question of limitations. When Mr. Blois told her that he would follow up with an email, she said that she did not have access to her work email. After that telephone call, the grievor called Dr. Harrison, who provided her with a medical certificate (Exhibit G-28 at Exhibit E-1, tab 36) reiterating the grievor's visit of December 31, 2013, and her reassessment date of January 22, 2014, which she dropped off at the union's office.

[296] The grievor was reassessed on January 22, 2014. Dr. Harrison indicated that she needed more time off (Exhibit G-29 at Exhibit E-1, tab 37).

[297] During this period, Mr. Rochon updated the grievor on the efforts to find her another job and would have told her about his email exchange with Mr. D'Aoust, in which Mr. D'Aoust indicated that none of the colleagues he had contacted had indicated an interest in providing her with an opportunity within their organizations but that he would continue his efforts in the new year (Exhibit G-21, tab 23).

[298] Another medical certificate, dated February 12, 2014, was provided to the employer (Exhibit G-30 at Exhibit E-1, tab 38).

[299] With respect to the next medical certificate dated March 17, 2014 (Exhibit G-31 at Exhibit E-1, tab 39), Mr. Rochon informed the grievor that it was not acceptable to the employer. Mr. Blois considered that the grievor was not fit to return to work, although Dr. Harrison had stated that she was.

[300] The grievor then referred to several email exchanges on her leave for medical reasons referenced earlier in this decision (Exhibit E-1, tab 41).

[301] The grievor felt that she had no choice but to agree to the Health Canada assessment because had she refused, she would have had to return to the same work environment. With respect to the assessment, she said that Ms. M. Laframboise refused Mr. Rochon's request for the document that would be sent to Health Canada and told him that the grievor was aware of what would be sent. The grievor signed the consent to the assessment before the package was sent to Health Canada and saw it only afterwards. She felt that the letter to Health Canada was not neutral or objective but that it set out the employer's perspective.

[302] As to whether after May 2014 the employer took any steps to accommodate the grievor, she said that Ms. M. Laframboise met with Mr. Rochon on April 2, 2014, but that no solution was reached. The grievor said that she could have teleworked, reported to another person, or worked on another project.

[303] During the grievor's absence until April 7, 2014, the employer used her sick leave to pay her, although she was fit to return to work.

[304] The grievor first learned of her return to work when she received a letter of offer from Mr. D'Aoust by email on October 3, 2014 (Exhibit E-1, tab 61). She understood that it was for a temporary six-month assignment. Nobody had consulted her about the assignment or its qualifications.

[305] Ms. Farquharson called the grievor on October 9, 2014. She told the grievor about the Legislative Governance Division and the work it performed and stated that Ms. Neamtz would be her manager and that she would work under Mr. Beaudoin's responsibility on a water-related project. She also mentioned offsets. She did not mention a requirement for legal skills. The grievor signed the assignment agreement (Exhibit G-12, tabs 27 and 28). Before she started the assignment, she was not provided with any documents, training, or other materials.

[306] When the grievor reported to work on October 15, 2014, she was greeted by Ms. Neamtz, and they immediately had a meeting. Ms. Neamtz provided an explanation similar to that of Ms. Farquharson and gave the grievor three pages about the Legislative Governance Division structure, which she said were not current. Ms. Neamtz also gave the grievor information about the unit and a binder about information management practices in the Legislative Governance Division. Ms. Neamtz said that under matrix management, she would be the grievor's homeroom manager but that the grievor would work on projects with other managers.

[307] Ms. Neamtz said that the grievor would be under Mr. Beaudoin's responsibility for the water-legislation-research project and that she would be under Ms. Neamtz's responsibility for the biodiversity project, but her contact was another person, whom she identified. To that point, no details had been provided about either of the two projects, and no mention of fracking had been made.

[308] On October 17, 2014, the grievor met with Ms. Farquharson. She gave the grievor one slide deck, pointed to one page in it, and said that it was the grievor's goal for the water-legislation-research project. She said that the grievor would work with Mr. Beaudoin and on the biodiversity project. She told the grievor that the water-legislation-research project was not a priority and did not mention the fracking part of the project.

[309] On October 22, 2014, the grievor met with Mr. Beaudoin. He gave her reading material about the water-legislation-research project, but it did not refer to the project's goal. Referring to Mr. Beaudoin's email to her of October 23, 2014 (Exhibit E-4), the grievor said that she did not have access to the eco-lab or to the information she was expected to read. She said that the *Canada Water Act* (R.S.C., 1985, c. C-11) and the *International River Improvements Act* (R.S.C. 1985, c. I-20) were part of the material and that those Acts were consistent with the goal set by Ms. Farquharson. There was no reference to international legislation for the legislative review and no mention of the fracking project.

[310] The grievor said that she was happy to return to work and that she wanted to do a good job on the water-legislation-research project, which was in her area of expertise. She found it challenging in that it took some time to set up in a new environment, with new policies and procedures. Following her gradual return, the week of October 20 to 24, 2014, was her first full week of work.

[311] Concerning the legal aspect of her work, the grievor said that she was familiar with certain aspects of the *Canadian Environmental Protection Act, 1999* (S.C. 1999, c. 33; *CEPA*) but that she was asked for certain items for which she had no experience. She could not understand some of the articles she read, such as dealing with constitutional heads of power. Ms. Neamtz asked her if there were any court decisions on a matter, but the grievor did not know how to search for court decisions.

[312] The grievor said that while she had been on leave, the performance management process had changed to an electronic, Internet-based application. She did not have any information about or training on it.

[313] When the grievor was referred to her résumé, which indicated that she had experience with regulatory systems, she said that she had done work on a project related to a specific part of the *CEPA*. She had worked with two others on the project.

It lasted several months, during which she had access to Department of Justice lawyers. Concerning an entry on her résumé, which indicated that she had performed research and analysis on drinking water quality, public reporting, and communication in eight jurisdictions to identify best practices for a branch of Health Canada dealing with First Nations and Inuit health, the grievor said that she had worked as a consultant for Health Canada and that the project had been limited in scope.

[314] The grievor said that in the Environmental Stewardship Branch, 2 pieces of legislation were identified, which were then expanded to 28 pieces dealing with water. Neither Ms. Farquharson nor Ms. Neamtz had asked her about her experience with legislation or legal issues, and she received no training on the legal aspects of the assignment.

[315] When she was asked about her training at a two-day Canadian Bar Association conference in November 2014, the grievor said that she attended because on the previous day, a colleague had told of having paid for it but not being able to attend. The conference was about water and fracking, and Mr. Beaudoin had mentioned fracking that morning. Upon arriving, she observed that the conference was for Department of Justice lawyers and other lawyers. She could not understand some of the information, and how legislation works was not explained to her. She attended one half-day only and did not consider it training.

[316] The grievor submitted the water-legislation-research project outline to Mr. Beaudoin on November 7, 2014. A few days later, she saw him. When she asked him about the outline, he replied, “Good”, and stated that he would provide feedback shortly.

[317] When she accessed her email on Friday, November 14, 2014, the grievor found an email of the previous day from Mr. Beaudoin, with his comments. She said that the comments were not consistent with what Ms. Farquharson and Mr. Beaudoin had told her.

[318] Mr. Beaudoin was away the next week, and the grievor met with Ms. Neamtz and Mr. Beaudoin on November 24, 2014; she was given further input. She resubmitted the project outline on November 28, 2014, and was told that it required further revision. She submitted it again on December 3, 2014.

[319] While still working on the project outline, the grievor told Ms. Neamtz that she had six weeks of annual leave outstanding. Ms. Neamtz told the grievor that she was not aware of it and that she did not have the budget to pay the grievor in lieu of the leave.

[320] The grievor said that Ms. Neamtz told her that her role in the biodiversity offsets project had not been identified, that her priority was to work on the water-legislation-research project, and that if time permitted, she was to work on other projects.

[321] When developing the water-legislation-research project outline, the grievor worked from the instructions of Ms. Farquharson and Mr. Beaudoin. She said that when she received comments on the first two versions, there appeared to be conflicting information between what Ms. Farquharson had told her and Mr. Beaudoin's comments.

[322] On December 9, 2014, Ms. Farquharson held a meeting with Ms. Neamtz, Mr. Beaudoin, and the grievor. The grievor said that Ms. Farquharson was pleased with her research and that she thought that the grievor had sourced interesting material, which she had not seen before. The grievor did not know certain things and was told that the information would be provided. She said that Ms. Farquharson acknowledged that certain departmental information was not current and that the grievor would be provided updates. The grievor said that when she expressed concern about the back and forth on the project outline, Ms. Farquharson told her that that was how the work was done. The grievor submitted the project report at the deadline of December 17, 2014.

[323] During that period, Ms. Neamtz asked the grievor to work on the summary of the amendments to the *Saskatchewan Environmental Code*, for which she had already provided the first version, and to attend water-network meetings.

[324] Also being prepared was a document for the policy forum concerning information on a water aspect for which the grievor needed clarification. She provided the document before the policy forum was held.

[325] With respect to Ms. Neamtz's email to the grievor of November 14, 2014, concerning staffing certain EC-06 positions (Exhibit E-1, tab 78), the grievor said that

she did not apply to them because a legal background was required, and she did not have certain qualifications. In discussions with her, Ms. Neamtz told her that if she felt that she was a fit, she could be deployed at-level without competing in the process. She asked Ms. Neamtz for the names of managers who could use her qualifications and then contacted them. She said that some managers did not return calls. She said she that she also did a job search on her own, commensurate with her qualifications.

[326] On January 21, 2015, the grievor met with Ms. Neamtz and Mr. Beaudoin for their feedback. As she had not received written feedback from them, she could not prepare for the meeting. Ms. Neamtz gave her a copy of the water-legislation-research document for the policy forum with her handwritten comments, but she did not go through them. She made general comments verbally. When the grievor read the handwritten comments later, the grievor required clarification. The earliest that Ms. Neamtz could provide it was January 28, 2015. During the meeting, the grievor was asked for items that she thought were in the document but perhaps were not clear enough for Ms. Neamtz and Mr. Beaudoin and that the grievor would address them in the next version.

[327] When she was referred to Ms. Neamtz's testimony that the grievor was defensive and evasive, the grievor said that Ms. Neamtz asked her if the *CEPA* addressed fresh water. The grievor thought that was in the document for the policy forum and tried to understand what they were saying. Ms. Neamtz differentiated between legislation that has not been enacted and legislation that is coming into force. The grievor did not understand that there were major concerns about her employment.

[328] With respect to Ms. Neamtz's testimony concerning the back and forth on a performance agreement related to the grievor's assignment to the Legislative Governance Division (Exhibit G-32), the grievor believed that minor revisions were made and that it was formalized on February 4, 2015.

[329] The grievor said that on January 30, 2015, when she told Ms. Farquharson that Ms. Farquharson could review the December 17, 2014, version of the water-legislation-research project report or await the revised version, Ms. Farquharson said that she would review the December 17 version. On February 6, 2015, Ms. Farquharson asked the grievor for a revised version, which she did not have and could not complete that

day. Ms. Farquharson said again that she would review the December 17 version. Ms. Farquharson did not tell her that this was an issue.

[330] The grievor met with Ms. Farquharson on February 9, 2015. It was put to her that Ms. Farquharson had told her that she had performance problems. The grievor said that on February 9, 2015, Ms. Farquharson emailed her feedback on the version of the water-legislation-research project report submitted on December 17, 2014, and that she scheduled a meeting for the same day. The grievor said that during the meeting, Ms. Farquharson did not comment on her performance. She acknowledged that her report had not advanced as far as Ms. Farquharson had wanted it to.

[331] On February 18, 2015, the grievor met with Ms. Neamtz, who criticized her for not having provided a revised version of the water-legislation-research project report to Ms. Farquharson and said that that displayed resistance to management. She told Ms. Neamtz that Ms. Farquharson came to her desk on January 30, 2015, and asked for a revised version in 30 minutes. She told Ms. Farquharson that she had not been able to incorporate the information she had gathered into the report, which would show progress since the first version. She was working on a master file with her own annotations, which she showed to Ms. Neamtz during the meeting. She knew that the document was hard to follow. She told Ms. Neamtz that she would consider her feedback and discuss it at a later date.

[332] On February 19, 2015, when the grievor asked Ms. Neamtz to discuss the matter, Ms. Neamtz said that she did not have time, yet some 20 minutes later, the grievor received an email from Ms. Neamtz expressing her concerns (Exhibit E-1, tab 76). The grievor responded by email on February 25, 2015 (Exhibit G-33).

[333] On February 25, 2015, Ms. Neamtz and Mr. Beaudoin met with the grievor for an update on the water-legislation-research project. The grievor acknowledged the delays and said that she would provide a revised version of her report on March 3, 2015, which she did.

[334] The grievor was referred to a version of the water-legislation-research project report showing comments in bubbles made using Word's track changes feature (Exhibit G-34). She was asked whether there was any difference between them and Ms. Neamtz's handwritten comments on the March 3, 2015, version of the water-legislation-research project report (Exhibit E-10). She said that some comments replied

to Ms. Neamtz's and that she had put comments in bubbles only if she did not address them in the text, and she did not have to address all the comments. She said the bubble comments were not included in the water-legislation-research project report (Exhibit E-10).

[335] In early April 2015, Ms. Farquharson and Ms. Neamtz met with the grievor to discuss her performance appraisal. They handed her an 11-page document. In an email sent after the meeting, the grievor reiterated the comments she made at the meeting expressing her surprise at the appraisal's contents (Exhibit E-1, tab 80).

[336] The grievor was shocked by Ms. Neamtz's feedback, some of which she had not heard before, such as criticism about her core competencies and some examples that had not been raised with her as issues. All the grievor knew was what she had been told on February 18 and 19, 2015. She said that when she first began working at the Legislative Governance Division, she told management to inform her if it was displeased with any part of her work, and she would correct it. The only thing she was told was that the water-legislation-research project report was delayed. She took notes, as Ms. Neamtz gave verbal feedback and did not read from the document.

[337] After the meeting, the grievor reviewed the document at her desk. She told Ms. Neamtz that she wanted clarification, to which Ms. Neamtz said that Mr. Beaudoin had made some of the comments and that she would speak with him. As Ms. Neamtz was to go on leave, she could not address it until April 13, 2015. The grievor provided her written clarification request on the same day on which Ms. Neamtz returned to work (Exhibit E-1, tab 80), to which Ms. Neamtz responded on April 15, 2015 (Exhibit E-1, tab 82). The grievor sent Ms. Neamtz a response on May 5, 2015 (Exhibit G-18).

[338] The grievor said that Ms. Neamtz did not initiate a performance action plan.

[339] The grievor's assignment was extended (Exhibit G-21, tab 29). She said that Ms. Farquharson made it clear that the extension had not been her decision and that the grievor was no longer welcome at the Legislative Governance Division.

[340] On April 23, 2015, the grievor had a meeting with Ms. M. Laframboise and Mr. Rochon to discuss where she would report to work following the completion of her assignment. Ms. M. Laframboise began the meeting by saying that she was aware of the grievor's performance issues, although the appraisal had not yet been finalized. Ms. M.

Laframboise said it was becoming difficult to find a position for the grievor and asked her if she had options to propose. The grievor had not thought of options because she believed that Ms. M. Laframboise would inform her of available options. The grievor told her that she wanted to remain in the public service. The grievor said that she had contacted people, one of whom told her that they were in the process of posting a BI-05 position, knew of her, and were keeping her résumé on file. She did not recall if she knew of this before the meeting.

[341] The grievor told Ms. M. Laframboise that she was willing to market herself and asked if she could be informed of opportunities before they were posted. Ms. M. Laframboise refused the grievor's request that she facilitate contact with staffing team leaders both inside Environment Canada and in other departments and agreed only to do it with HR. Ms. M. Laframboise asked Mr. Rochon to provide a summary of the meeting, which he did by letter dated May 12, 2015 (Exhibit E-2).

[342] The grievor testified that during her time at the Legislative Governance Division, she was not provided any training or coaching concerning issues identified by Ms. Neamtz in the grievor's performance appraisal.

[343] The grievor then went through her training history (Exhibit G-35 at Exhibit E-1, tab 93). She identified the compulsory courses, which included some on values and ethics, creating a respectful workplace, information management, and legislative and policy work. She was on leave when all the employees were trained on the implementation of the new performance management system, and the training was no longer available. The only session she received was on March 3, 2015. The courses she selected were on cost-benefit analysis, influencing without authority, innovation and stewardship, and Environment Canada leadership architect training.

[344] The grievor testified that before receiving her performance appraisal from Ms. Neamtz, she was never told that there were issues with her core competencies. When she was asked if she felt qualified for the work assigned to her at the Legislative Governance Division, she replied that the fact she did not have a legal background hampered her.

[345] Describing the June 12, 2015, meeting, at which her employment was terminated, the grievor said that she could not believe it and that she could barely speak. She had never been warned in a performance action plan or at performance-

review meetings that if her performance did not improve, she would be terminated. When she read the letter, she felt that many things in it were not correct.

[346] When she was asked to describe the psychological impact of her termination, the grievor said that she felt hopeless and humiliated, could not sleep, and saw no solutions. She said that her allegation that her human rights had been violated stemmed from the employer's failure to accommodate her mental-health issues and that she was made sick because of work. The termination was an attack on her dignity and self-worth.

[347] The grievor said that she sought medical and psychological assistance. She saw her doctor on May 29, 2015, who observed that the grievor was distraught. She met with the Employee Assistance Program immediately after her termination. She saw her doctor next in July 2015 and was prescribed psychotherapy. As of the hearing, she had had 20 sessions and was continuing with them.

[348] With respect to her employment search, the grievor began it in July 2015. As she had no idea how to carry one out in the private sector, she researched the Ottawa job market. She went to an employment centre and received career counselling at the University of Ottawa. She searched job websites weekly and those of the associations to which she belonged. She also searched those of personnel recruitment companies.

[349] For the public service, she was limited to jobs open to the public, few of which are available at her level. The BI-05 job for which she had a contact was posted in July 2015, but she could not apply to it. She also explored job-training programs, but they were not geared to individuals with postgraduate education. She did not find employment.

[350] The grievor's challenges to her employment search were her age and her requirement to remain in Ottawa. It was difficult to contact her network, as the employer had withheld her personal belongings, including her contact list, training documents, and performance appraisals until the end of September 2015. Someone had gone through her belongings and had put things in different boxes. She did not have access to documents to defend herself. When she contacted people outside Environment Canada, she had to say that she had been terminated.

[351] With respect to current references, the grievor said that as she had worked with Environment Canada since 2010, there was no one she could ask. She said that even while she was working, references were an issue.

[352] The grievor said that she had out-of-pocket dental expenses that would otherwise have been covered by the Public Service Dental Care Plan (Exhibit G-36).

[353] In cross-examination, the grievor was questioned about certain aspects of her résumé. Concerning her reference to a successful track record, she said that she had worked on the several successful projects listed and that on most of them, she had been the lead, or she mentioned the component she had been responsible for.

[354] Concerning an entry that indicated that she had experience with regulatory systems, the grievor said that it involved small components of the *CEPA* and the Municipal Industrial Strategy for Abatement (MISA). She conducted her review by reading the legislation, and she made sure that parts of the MISA were in the *CEPA*. If not, she would note it. If she had an interpretation issue, she would contact a Department of Justice lawyer.

[355] With respect to another entry on her résumé, namely, her research and analysis on drinking water quality, public reporting, and communication in eight jurisdictions to identify best practices for a branch of Health Canada dealing with First Nations and Inuit health, the grievor said that it was not legislation as such; it concerned how each jurisdiction informs communities that water should not be consumed.

[356] The grievor's résumé included a course at the Canada School of Public Service, number R001, titled, "Introduction to Regulating". It comprised two days, was for individuals working in policy, and covered how legislation is developed. The course included identifying the need for the legislation, along with the cost-benefit and the risk analyses.

[357] With respect to the time-recording-system, the grievor said that while she input her information into it, she did not make the errors or duplications, and the Audit Evaluation Branch was well aware of those issues. As an example, she explained the steps she took entering the information for June 23, 2011, which was one of the dates for which her information was duplicated in the time-recording-system.

[358] When she was asked why she refused a facilitated discussion with Mr. Blois on May 29, 2013, the grievor said that the accommodation grievance had been filed and that the recourse was ongoing, which she did not want to jeopardize.

[359] The grievor said that she had tried everything to deal with Mr. Blois and that he knew there was tension between them. He did not offer a facilitated discussion in the fall of 2011, after becoming aggressive with her when they discussed risks to the project. He would suddenly direct comments at her that were unrelated to the project. He told her that she did not do her job efficiently. She said she would do the work; he would approve it and then change his mind and direct her to redo it.

[360] The grievor said that without informing Mr. Blois, she went to the Office of Conflict Resolution for training on how to speak to him. She followed the training, but it did not work. She also contacted the Employee Assistance Program in the fall of 2011 for advice. Mr. Rochon's predecessor had advised her several times to file a harassment complaint. She did not, because she thought the situation could be managed.

[361] The grievor said that Mr. Blois's behaviour was one of the allegations in her harassment complaint. She also alleged that if she requested support, he would not provide it.

[362] Concerning her list of accomplishments for her 2012-2013 performance evaluation and the courses she took, the grievor said that the first course was compulsory, the supervision course was approved by Mr. Blois, and the conflict resolution course was compulsory, as was the ATIP course. Lunch and learn sessions involved one-hour information sharing. Environment Canada organized corporate events.

[363] When she was asked whether when she joined the Legislative Governance Division, Ms. Farquharson provided her with working documents for her file, the grievor said that Ms. Farquharson had provided her with several stacks of documents, some of which Ms. Farquharson had identified as being for the grievor, Mr. Beaudoin, or both of them. Of the documents identified with her name, the grievor found three that were useful to her water-legislation-research project, which she could not otherwise access. Since she had worked at Environment Canada, she already had some documents, while she could access others on the Internet.

[364] Concerning her meetings with Ms. Neamtz, the grievor said that they usually occurred every two weeks, although sometimes, they were cancelled. They lasted until the end of March 2015. At them, Ms. Neamtz sometimes told the grievor what she required, and sometimes, the grievor raised items.

[365] With respect to meetings with Mr. Beaudoin, he would schedule them when he deemed them necessary. Their first meeting was to discuss the water-legislation-research project outline, and others concerned issues he wanted to discuss. He did not call many meetings with her.

[366] The grievor was asked about the comparison between the water-legislation-research project report showing the track changes comment bubbles (Exhibit G-34) and the March 3, 2015, version (Exhibit E-10) with Ms. Neamtz's handwritten comments. The grievor replied that it was the same document but in different formats. She incorporated Ms. Farquharson's comments. The grievor said that if some bubbles did not contain her comments, it was because she had not addressed the comments in those bubbles. If she had already addressed some comments, she did not comment further. She said that the table at the end of the document addressed many of the issues that had been raised.

[367] Concerning her master file, the grievor said that she created it at the start of her assignment as her working document. It contained more information than did the water-legislation-research project report (Exhibit G-34), along with her comments, information to be included, and comments from Ms. Neamtz and Ms. Farquharson. It would have taken a couple of hours of work to make it read clearly to someone else. She showed it to Ms. Neamtz. When she was asked how much time she spent on it, she replied that she added information as she went along and that she did not spend time developing it.

III. Summary of the arguments

A. For the employer

[368] First, the employer presented its arguments concerning the termination grievance. It addressed the accommodation grievance in its rebuttal argument, set out later in this decision.

[369] The employer referred to s. 12(1)(d) of the *Financial Administration Act* (R.S.C., 1985, c. F-11) and to the Board's jurisdiction under s. 230 of the *FPSLRA*. It submitted that the issue is whether its conclusion that the grievor's performance was unsatisfactory was reasonable. It referred to *Plamondon v. Deputy Head (Department of Foreign Affairs and International Trade)*, 2011 PSLRB 90 at paras. 50 and 51, and submitted that the criteria for assessing whether performance was reasonable are the following:

1. Were the standards of performance clearly communicated to the grievor?
2. Were the standards appropriate?
3. Did the grievor receive the tools, training and mentoring sufficient to meet the standards of performance in a reasonable period?
4. Was the assessment performed in good faith?

[370] With respect to the first two criteria, the objectives set out in the grievor's performance evaluation for 2011-2012 (Exhibit E-1, tab 32) were based on Mr. Blois's commitments in his performance agreement (Exhibit E-1, tab 5). Mr. Lemieux gave the grievor copies of his performance and talent management agreement for 2011-2012 (Exhibit E-1, tab 26B).

[371] The employer submitted that the objectives set out in the performance appraisals are detailed and indicate how performance is measured and how results are achieved. Both Mr. Blois and Mr. Lemieux testified to the content of the performance appraisals and explained why the grievor did not meet the objectives.

[372] In March 2011, Mr. Blois noticed that the grievor was late on her deliverables and that she focused too much on details. He had received complaints from clients about her repeated requests for the same information. In his opinion, the quality of her work was inadequate. He said that his assessment was based on his experience, observations of the grievor's work, and feedback from clients and colleagues. I note that there was no evidence of specific examples of such client complaints.

[373] Mr. Lemieux testified that when he supervised the grievor in 2012-2013, her workplace relationships were a problem. He said that her list of accomplishments for 2011-2012 was transactional and that she had had a lean workload. He noticed too many delays and too much time spent on administrative matters.

[374] The employer submitted that several documents and emails indicate the grievor's comments on her performance appraisals or on feedback she received. As

examples, the employer pointed to the 2012-2013 appraisal (Exhibit E-1, tab 32), which contains her comments, and the 2011-2012 final evaluation (Exhibit E-1, tab 33). In the employer's submissions, the comments demonstrate that her concerns were addressed.

[375] With respect to feedback, the employer referred to the grievor's mid-year review on November 23 and 24, 2011; the April 2, 2012, email inviting her to a facilitated discussion with colleagues (Exhibit E-1, tab 10), which the employer characterized as relating to her office behaviour; and the August 30, 2013, email concerning the resumption of her reporting relationship with Mr. Blois (Exhibit G-21, tab 12).

[376] The employer also referred to the performance action plans and to meetings with the grievor about them.

[377] With respect to the grievor's Legislative Governance Division assignment, the employer submitted that Ms. Farquharson's evidence was that the work assigned to the grievor was commensurate with her experience and résumé.

[378] The grievor's work objectives were discussed with her (Exhibit E-1, tab 71). Ms. Neamtz's performance evaluation of the grievor was based on her observations, a consultation with Mr. Beaudoin, input from Ms. Farquharson, and input from the grievor. The grievor commented on the evaluation (Exhibit E-1, tab 80), and Ms. Neamtz responded to those comments (Exhibit E-1, tab 82).

[379] The employer cited several examples of the grievor's comments and of the feedback she received, such as Mr. Beaudoin's email to her of December 4, 2014 (Exhibit E-1, tab 68), Ms. Neamtz's email to her of February 19, 2015 (Exhibit E-1, tab 76), and Ms. Farquharson's comments of February 9, 2015 (Exhibit E-1, tab 85). The employer also referred to feedback from Mr. Beaudoin and Ms. Neamtz concerning the water-legislation-research project (Exhibits E-8, E-9, and E-10). Ms. Neamtz commented on the *Saskatchewan Environmental Code* on December 24, 2014 (Exhibit E-13).

[380] The employer's position is that the grievor was given appropriate objectives that were communicated to her and that she received feedback for which she had the opportunity to provide comment. She received the tools, training, and mentoring sufficient to allow her to meet her work objectives. The employer referred to her 2012 learning plan (Exhibit G-26, at Exhibit E-1, tab 27) and to Mr. Blois's email of

August 30, 2013 (Exhibit G-21, tab 12), the last paragraph of which stated that the grievor should seek training when required. The employer submitted that while she was assigned to the Legislative Governance Division, the feedback she received on the water-legislation-research project constituted mentoring.

[381] The employer submitted that during the grievor's Legislative Governance Division assignment, her performance was assessed in good faith. There was no evidence that management was out to get her and that no one in the Legislative Governance Division knew of her issues in the Audit and Evaluation Branch.

[382] With respect to the grievor's qualifications, the employer referred to Ms. Farquharson's evidence that although she preferred a person who could hit the ground running, a legal background was not required for the assignment, and she did not want the individual to carry out legal analysis.

[383] The grievor had a light workload at the Legislative Governance Division, and Ms. Neamtz stated that the grievor could not work on multiple projects simultaneously.

[384] The employer submitted that the Legislative Governance Division did not set up the grievor for failure and that the employer tried to find her other suitable employment.

[385] With respect to the grievor not having been warned of the termination, the employer referred to *Reddy v. Office of the Superintendent of Financial Institutions*, 2012 PSLRB 94 at para. 99, and *Kalonji v. Deputy Head (Immigration and Refugee Board of Canada)*, 2016 PSLREB 31 at para. 206 (upheld in 2018 FCA 8).

[386] The employer submitted that management in the Audit and Evaluation Branch and the Legislative Governance Division were clearly dissatisfied with the grievor's performance. With respect to the Legislative Governance Division, Ms. Neamtz stated her dissatisfaction in January 2015, and Ms. Farquharson had to intervene to accelerate progress on the grievor's project.

B. For the grievor

[387] The grievor first presented arguments relating to the termination grievance. She began with a review of the evidence. She then addressed the accommodation grievance.

[388] The grievor began working at Environment Canada on November 22, 2010. The director to whom she initially reported left Environment Canada at the end of that year, and she was then supervised by Mr. Blois.

[389] The grievor had two brief meetings with Mr. Blois concerning her performance, in February and March 2011. Based on his comments, she believed that her performance was satisfactory. She met with him in June 2011, during which he provided mostly positive feedback.

[390] The grievor's work relationship with Mr. Blois gradually deteriorated during 2011. That fall, she began talking to her union about possible recourse concerning Mr. Blois's improper and aggressive conduct toward her but decided not to pursue a harassment complaint at that time.

[391] The grievor received the first substantive feedback from Mr. Blois concerning her performance on November 23 and 24, 2011, one year after she had started at Environment Canada. His feedback was verbal, and she found it problematic in several respects. Many comments were based on time-recording-system data, which she had been told was not to be used for performance management. While she had found many inaccuracies in the data, Mr. Blois did not permit her to provide feedback on that data. He also told her that she had interpersonal issues, the details of which he did not provide, despite her request. She could not respond without knowing the details of the issues.

[392] A performance action plan was provided to the grievor on December 19, 2011. Her concerns were that it had been developed unilaterally, was vague, and lacked specifics about the objectives. Two performance-action-plan meetings occurred in 2012, on January 4 and on February 15. The tone of the January meeting was aggressive and not productive. The discussion was vague, and no concrete suggestions were made about what the grievor should do. The February meeting took about 10 minutes and consisted of mostly positive comments from Mr. Blois.

[393] During the investigation of the grievor's harassment complaint against Mr. Blois, she reported to Mr. Lemieux from May 2012 to September 2013. She submitted that the separation from Mr. Blois was not as complete as she would have liked because Mr. Blois still provided input on her performance appraisals to Mr. Lemieux, who

reported and was accountable to him. The grievor submitted that this is a factor to consider when examining her 2011-2012 performance appraisal.

[394] The grievor submitted that at the end of the first period of Mr. Blois's supervision from January 2011 to the end of May 2012, he did not provide her with written performance appraisals; nor had he provided training or coaching relating to her performance deficiencies. The 2011-2012 performance appraisal was based on Mr. Blois's feedback through Mr. Lemieux. That performance appraisal was finalized only in late 2013 (Exhibit E-1, tab 33). In the grievor's submission, the appraisal was not negative, as it indicated that she had achieved one objective and had not fully achieved another one, and it did not contain any reference to her interpersonal issues.

[395] Turning to the period in which Mr. Lemieux supervised the grievor, both his evidence and hers was that their working relationship was much better than what she had had with Mr. Blois.

[396] Mr. Lemieux was responsible for the grievor's performance appraisal for 2012-2013, which, as he acknowledged in his testimony, showed improvement in a number of areas. Concerning performance-action-plan meetings, there was conflicting evidence as to whether they took place while Mr. Lemieux supervised her. He thought that such a meeting occurred on December 12, 2013, but he provided no details and did not produce a signed performance action plan. As the grievor was clear that she did not have a performance-action-plan meeting with Mr. Lemieux and that he did not give her a performance action plan, her evidence on that point should be preferred.

[397] While being supervised by Mr. Lemieux, the grievor was not provided training or coaching for her specific areas of deficiencies and none was suggested, and no mention was made of the core competencies issue in her performance appraisals for 2011-2012 and 2012-2013.

[398] Mr. Lemieux testified that he recognized that the grievor and Mr. Blois had a dysfunctional relationship. He was also concerned about her health being affected later in 2013 when her reporting relationship with Mr. Blois resumed, as set out in his email of December 4, 2013, to Mr. Blois (Exhibit G-9).

[399] Mr. Blois resumed the performance-action-plan meetings, although the performance action plan was virtually unchanged, and even though the grievor's

performance had improved while Mr. Lemieux supervised her. Three performance-action-plan meetings took place in the fall of 2013. They were characterized by vague comments, a lack of specific objectives to be achieved, and an aggressive tone.

[400] During the fall of 2013, no training or coaching was provided to the grievor relating to the performance issues that had been raised. Mr. D'Aoust testified that he had spoken with Mr. Blois about more formal coaching for the grievor and that Mr. Blois had said that she was not interested. Mr. Blois did not testify that an offer of formal training had been made to her and that she had refused it. She submitted that her testimony that she was never offered formal coaching should be preferred to Mr. D'Aoust's hearsay evidence.

[401] During the fall of 2013, the grievor's working relationship with Mr. Blois worsened. At the end of December 2013, her doctor put her on sick leave as of January 2014. The employer's response was hostile, in that Mr. Blois called the grievor at home and challenged her doctor's medical certificate. When her health improved in spring 2014, her doctor recommended that she could return to work in a different environment.

[402] The employer challenged the medical certificates, claiming that the information in them was not clear. Dr. Harrison was cooperative and responded to requests for more information. The employer maintained that the information provided by Dr. Harrison was not clear enough and wanted a Health Canada assessment. Health Canada supported Dr. Harrison's recommendation; their respective medical certificates used similar language concerning the grievor's required medical accommodation.

[403] It appears that between April and October 2014, the employer did not explore other possibilities to return the grievor to work. Mr. D'Aoust testified that he put the job search on hold during her sick leave. To that point, the search had not been extensive; Mr. D'Aoust referred to a couple of phone calls being made, nothing more.

[404] When the grievor was ready to return to work, the employer decided to place her in another environment. She submitted that it was an accommodation for a psychological disability because Health Canada had stated that if she were returned to the same environment, it would cause her mental-health issues.

[405] The grievor submitted that she was pushed into the Legislative Governance Division assignment, for which she was not qualified, which the employer was aware of. The assignment required some kind of legal background or training that she did not have. Even if the employer did not know of her lack of qualifications at the outset, it did know by December 2014, as evidenced by the email exchange in which Ms. MacLellan advised Ms. Neamtz, Ms. Farquharson, and Mr. Beaudoin that the grievor's inability to work on more than one file at a time was partially the result of her not having a strong legislative background (Exhibit G-20, which is the last page of Exhibit G-16). Ms. Neamtz did not make changes to the comments (in Exhibit G-20). The grievor submitted that the assignment agreements (Exhibit G-21, tabs 27, 28, and 29) indicated that a background in legal framework and legal process was required.

[406] Ms. Farquharson and Ms. Neamtz testified that they thought that the grievor had the proper background based on two items on her résumé. Neither the grievor nor Mr. Rochon were consulted as to whether the Legislative Governance Division assignment was suitable for her; nor were they consulted about her résumé. Had the employer inquired, the grievor could have explained that as she testified, the two items had been limited in scope, and in one of the positions, she had access to Department of Justice lawyers. She testified that she was not offered legal training before going to that assignment; nor was any meaningful effort made to provide her with training on legal issues.

[407] From the outset of her assignment, the grievor struggled due to several factors such as being in a new office and having new colleagues, as well as dealing with new systems, legal concepts, and the legal context. Even after it was recognized that she was struggling with the legal context, no steps were taken to correct it. At that point, the employer should have considered whether the assignment was suitable for her.

[408] During her assignment, the grievor was not on a performance action plan, and no systematic attempt was made during this period to deal with the deficiencies that management felt she had; nor did her Legislative Governance Division managers make their concerns about her performance clear to her. She did not understand that they were the type of concerns that could lead to termination. It was unclear from the emails she received that she was failing to meet performance objectives, as some positive comments had been made.

[409] The grievor submitted that the most important factor to consider was the length of the assignment. It began on October 15, 2014, and her performance appraisal was done for the period ending on April 1, 2015, which was a period of 5.5 months. During that period, she returned to work gradually, first 3 days per week, then 4, followed by returning full-time beginning on October 24, 2014. She had to take 6 weeks of annual leave, and she took 6 days of sick leave. Taking into account family related issues and training time, in reality, her time on assignment was 3.5 months.

[410] The grievor's arguments next dealt with Ms. Neamtz's unfavourable performance appraisal of April 2015, after the grievor had been on the assignment for 3.5 months. Mr. D'Aoust had informed the deputy minister of concerns about the grievor's qualifications and her lack of legal background. This was a sweeping conclusion, especially about core competencies, which had never been raised with her.

[411] The Legislative Governance Division negative performance appraisal caused problems when other assignments were sought for the grievor, as Ms. M. Laframboise confirmed during a meeting with the grievor and Mr. Rochon on April 23, 2015. Mr. D'Aoust thought that the appraisal was the final straw and recommended the grievor's termination to the deputy minister.

[412] When the grievor was terminated, she was not on a performance action plan; there had been no performance-action-plan meeting in 1.5 years, and only 5 such meetings were held in total, all of which were with Mr. Blois. From the time she first received feedback from him on November 23, 2011, she did not receive formal coaching or training specific to her deficiencies, and at no time was she warned about a possible termination. Before the Legislative Governance Division performance appraisal was done, only two appraisals had been completed, the second of which had identified improvements in her performance.

[413] The grievor testified to her psychological issue following the termination and the impact on her dignity and self-worth. Her efforts to find other employment, which began one month after her termination, proved difficult, and she was not employed as of the hearing.

[414] With respect to the case law concerning termination for unsatisfactory performance under s. 230 of the *FPSLRA*, the grievor had no substantial disagreement

with the employer. She submitted that the cases presented by the employer differ on the facts.

[415] The grievor submitted that the issue is whether, in the circumstances, it was reasonable for the employer to deem her performance unsatisfactory. She referred to the principles set out in *Raymond v. Treasury Board*, 2010 PSLRB 23. With respect to government policies, she submitted that while they are not binding on the Board, they are of assistance in applying the *Raymond* standards. Contrary to the performance-action-plan policy, the grievor's performance action plans did not have performance indicators for measuring success. The *Directive on Performance Management* refers to written records, while in this case, there was little documentation. The grievor also referred to the *Guidelines for Termination or Demotion for Unsatisfactory Performance; Termination or Demotion for Reasons Other than Breaches of Discipline or Misconduct; and Termination of Employment During Probation*.

[416] The grievor next presented more fulsome arguments on the *Raymond* criteria. She submitted that the employer acted in bad faith when it assigned her to the Legislative Governance Division. She submitted that there is evidence that those arranging her assignment knew at the outset that she was not qualified for the position (Exhibits G-7 and E-1, tab 60). Ms. Neamtz said that she had assumed that the grievor had experience, based on her résumé, but nobody spoke to the grievor or Mr. Rochon. Even if it was unclear at the outset, it was clear by December 2014 that the grievor did not have the qualifications (Exhibit G-20). Mr. D'Aoust acknowledged in cross-examination that the issue was brought to his attention but could not say whether the grievor's lack of qualifications was brought to the deputy minister's attention when Mr. D'Aoust recommended the termination.

[417] The grievor submitted that the fact that her performance appraisal was based on a work period that in reality was 3.5 months, while management was aware of her lack of qualifications, is the very essence of bad faith. There were also indications of bad faith in Mr. Blois's evaluation process. In this respect, the grievor pointed to him relying on incorrect time-recording-system data while refusing to give her an opportunity to correct it. Furthermore, he did not provide her with information on the interpersonal issues, which she required to address them.

[418] When the grievor resumed her reporting relationship with Mr. Blois in September 2013, he implemented virtually the same performance action plan as before, without considering the improvement in her performance that Mr. Lemieux had noted. The nature of the performance-action-plan meetings was hostile and aggressive, and Mr. Blois made inappropriate comments about her spending time on labour relations issues. She submitted that is sufficient to question the good faith of Mr. Blois's evaluations of her, which were part of the reasons behind her termination.

[419] The grievor submitted that additional indicators of the employer's bad faith were Mr. D'Aoust's testimony that he did not bring her improvement noted in the 2012-2013 performance appraisal to the deputy minister's attention. He was unsure if the deputy minister had been informed of her lack of qualifications for the Legislative Governance Division assignment. In addition, while the termination was based in part on her failure to meet the core competencies, it was brought to her attention only shortly before her termination.

[420] The grievor submitted that all these factors indicate that the employer acted in bad faith.

[421] With respect to whether appropriate standards were set for the grievor, she submitted that during her Legislative Governance Division assignment, they were not. She was not qualified for the assignment because of her lack of legal background. She submitted that even if it were argued that she could have picked up the legal aspect of the job, in reality, she spent only 3.5 months in it.

[422] The grievor submitted that the employer did not communicate the standards to her. She had had only two performance appraisals completed before her Legislative Governance Division assignment, which stated only that she should have provided more work product, without further specifics. There was no evidence that performance standards were communicated to her in less-formal situations, such as the mid-year review. The performance-action-plan document (Exhibit E-1, tab 6) does not communicate the standards that she was expected to meet. Mr. Blois made few practical suggestions as to how she could meet his concerns. During her Legislative Governance Division assignment, there was a lack of clarity as to the deadlines for reports and as to the performance standards she was required to meet.

[423] The grievor submitted that she was not given the necessary tools, training, and mentoring to attain the performance standards in a reasonable period. While she received some training, most of it was mandatory, and the rest was unrelated to the performance issue. She testified that no suggestions were made about training to help her with her performance deficiencies and that she was never offered any type of coaching. She was not given legal training before beginning her Legislative Governance Division assignment or after management recognized her lack of qualifications. During her assignment, she was under no performance action plan, which is a tool used for employees experiencing performance difficulties. The issue of core competencies was raised with her only in April 2015, although it was mentioned in the termination letter. She was not given tools, training, or mentoring in relation to the core competencies.

[424] In support of her arguments on the termination for unsatisfactory performance, the grievor referred to several performance-related cases submitted by the employer, which she distinguished on the facts.

[425] The grievor presented the following arguments concerning the alleged violation of her human rights related to her disability and the employer's failure to accommodate her medical limitations.

[426] "Disability" is defined in s. 25 of the *CHRA* as any previous or existing mental or physical disability.

[427] The grievor's disability was first diagnosed by Dr. Harrison in December 2013, who said that the grievor was depressed. The grievor stated that she was totally disabled until April 7, 2014.

[428] Dr. Hébert confirmed the disability. He stated that the grievor had to change workplaces to prevent her psychological disabilities from reoccurring.

[429] Health Canada's letter to the employer used language very similar to that of Dr. Harrison.

[430] In this case, the grievor's disability has been established, and there is no evidence to the contrary. The fact that she was fit to return to work and was not suffering from a disability at that time does not mean that it was not a disability.

[431] The grievor submitted that she required accommodation. The employer did nothing to accommodate her between April 7 and early October 2014. Mr. D'Aoust said that the search for other jobs for her was put on hold while she was on sick leave. Other options, such as telework, a special assignment, or reporting to another supervisor were not considered. She submitted that the employer should have done more to accommodate her. She wanted to return to work as soon as April 7, 2014, and Mr. Rochon made related efforts. Both she and the union were willing to do what was necessary for an accommodation, but the employer neither considered nor offered any options.

[432] The grievor then anticipated the employer's argument that it had provided accommodation as it had placed her in a different work environment. She submitted that the accommodation was not suitable if she did not meet the qualifications of or background for the Legislative Governance Division assignment. Neither she nor the union were consulted as to whether the assignment was appropriate or about management's concerns about her qualifications.

[433] The grievor submitted that what she characterized as an improper accommodation has a strong causal link to the employer's decision to terminate her for unsatisfactory performance. Her lack of proper background or qualification resulted in a poor performance appraisal, which in turn led to the termination.

[434] The grievor submitted that the employer's failure to accommodate her disability in a reasonable fashion was a factor that led to her termination. While it was not stated that the termination was based on disability as an intervening factor was present, it does not mean that the termination was not based on a disability.

[435] The grievor had the onus of establishing a *prima facie* case of discrimination.

[436] Discrimination does not have to be the only factor; it is sufficient if it is one of them.

[437] If the Board finds that a *prima facie* case has been made out, the onus shifts to the employer to justify its conduct.

[438] In cases of disability, one must examine whether the employer accommodated the employee to the point of undue hardship (see *Nicol v. Treasury Board (Service*

Canada), 2014 PSLREB 3 at para. 95, and *Pepper v. Deputy Head (Department of National Defence)*, 2008 PSLRB 8 at paras. 146 and 147).

[439] The grievor's position is that the decision to terminate her was both unreasonable and discriminatory.

[440] While technically, the Legislative Governance Division was a new environment, it is disingenuous to suggest that placing an employee with a psychological disability in an assignment for which she or he is not qualified is an appropriate accommodation. The grievor submitted that it was not an appropriate accommodation and that she was set up to fail.

C. The employer's rebuttal

[441] While the grievor was at the Audit and Evaluation Branch, management provided her with feedback and assistance. Concerning the time-recording-system data, Mr. Blois testified that it was not the only element on which he relied; it was a diagnostic. He also relied on feedback from clients and the grievor's colleagues.

[442] With respect to the allegations that the performance action plans were vague, the employer stated that they included indicators and corrective action.

[443] Concerning the grievor's testimony that Mr. Blois was aggressive and that he belittled the grievor, the employer submitted that there was no evidence of concrete examples. Furthermore, it was normal that Mr. Blois provided input to the grievor's performance appraisals, as he was her manager.

[444] Despite the emails suggesting that the grievor lacked the qualifications for the Legislative Governance Division assignment, the evidence, especially that of Ms. Farquharson, was that management assigned work to the grievor based on her résumé.

[445] With respect to the length of the grievor's assignment to the Legislative Governance Division, which was extended to June 2015, the employer submitted that despite the time frame, she was given a lighter workload because she could not finish other projects.

[446] While the grievor was not given a performance action plan during her assignment to the Legislative Governance Division, one was not necessary, as the assignment was for a short specified term.

[447] The employer then addressed the grievor's submissions on the human rights issue.

[448] Concerning the grievor's argument that she required accommodation and that the Legislative Governance Division assignment was an improper accommodation, the employer stated that the medical certificates and reports must be examined.

[449] The employer took the position that the grievor did not have a medical condition that required accommodation. As she did not make out a *prima facie* case of discrimination, there was no duty to accommodate.

[450] The employer submitted that the presented medical certificates and reports (Exhibit E-1, tabs 40, 44, and 51) are all different. It disagreed that Health Canada's letter states the same things as did Dr. Harrison's notes.

[451] In her medical certificate of March 24, 2014 (Exhibit E-1, tab 40), Dr. Harrison stated that the grievor had to work in a different environment but did not say that a medical condition was attached to that. The employer said that the context must be examined. The grievor had resumed her reporting relationship with Mr. Blois. In that context, what did a different work environment mean? That is what the employer sought to clarify and was the reason it put specific questions to Dr. Harrison.

[452] Dr. Harrison's letter of April 29, 2014 (Exhibit E-1, tab 44), is still not clear that it attaches a medical condition. The employer submitted that Health Canada's September 17, 2014, letter was clearer, as it stated that there was "no current medical condition."

[453] With respect to the period of April to October 2014, it was difficult for the employer to explore other options for the grievor when it did not know whether she had limitations. Mr. D'Aoust said that he did not want to exacerbate the situation while awaiting a medical response. On July 21, 2014, Health Canada suggested that she remain off work (Exhibit E-1, tab 48).

[454] The employer submitted in the alternative that if the Board finds that the grievor required accommodation, then her assignment to the Legislative Governance Division met that obligation.

D. The grievor's reply to the employer's rebuttal

[455] I permitted the grievor to present the following reply on the human rights issue.

[456] The grievor had a medical condition under the *CHRA* definition. There is no disagreement that she had a medical condition while she was off work from January to April 2014.

[457] The doctors were of the view that sending the grievor back to work in the same conditions would cause her disability to reoccur. The definition of "disability" under the *CHRA* speaks to previous disabilities. The Supreme Court of Canada has stated that human rights law requires a broad and purposive interpretation. The employer seemed to take the narrow approach that an individual must have a disability at the time accommodation is requested.

[458] With respect to whether the letters from Dr. Harrison and Health Canada stated the same thing, the grievor's submission is that they were substantially the same.

[459] The employer took a narrow approach to its human rights responsibilities. Mr. Blois called the grievor at home and questioned her medical certificates. The information the employer possessed could have allowed her to return to work had the employer taken a creative and collaborative approach.

[460] With respect to Health Canada's July 21, 2014, letter stating that the grievor should be off work until the assessment was completed, she submitted that the employer had no excuse for keeping her off work until it received that letter. At the very least, it should have put her on leave with pay and not required her to take sick leave.

[461] If the Board finds that a *prima facie* case of discrimination was made, it is the employer's onus to show that it accommodated the grievor. The grievor submitted that the employer did not meet that onus. Concerning good-faith accommodation, she submitted that the accommodation was not proper because she did not have the

qualifications for the Legislative Governance Division assignment, as the employer confirmed in writing.

IV. Analysis

[462] A voluminous number of documents was entered into evidence during the course of the hearing. While many were entered without being testified to at length, nevertheless, I have relied on them, as they form part of the evidentiary record. Accordingly, my analysis may refer to them even though they are not contained in the summary of the evidence.

[463] I am seized of the grievor's two grievances. The first, the accommodation grievance filed in April 2014, deals exclusively with an alleged violation of her human rights related to her disability and the employer's failure to accommodate her medical limitations. The second, the termination grievance, filed in July 2015, also refers to an alleged and continuing violation of her human rights and contests the employer's right to terminate her for unsatisfactory performance. Unsurprisingly, she devoted much of her evidence and arguments to the human rights issue, although of course, she did address the issues related to the employer's evaluation of her performance. That being said, the primary thrust of the grievances was clearly related to the need for and the sufficiency of the accommodation measures.

[464] For the employer, the case was much different. Although there is some evidence to the effect that Ms. Bourbonnais, the labour relations professional tasked with reintegrating the grievor into the workplace following the sick leave did, in some respect, turn her mind to the accommodation issue, the bulk of the evidence disclosed that most of the others representing the employer specifically denied that accommodation was necessary and proceeded to assign the grievor to the Legislative Governance Division on the basis that no accommodation was required. Indeed, the employer's primary argument was to the effect that no accommodation was necessary.

[465] For the employer, this case was merely about poor performance, and the human rights aspect was inapplicable to the facts at hand, as it believed that it dealt with the issue through the Legislative Governance Division assignment. It argued that it had met its duty to accommodate only in the alternative, firstly denying that it had any duty to. Furthermore, it did not submit any jurisprudence on the human rights issue in support of its position.

[466] While the parties submitted a number of decisions, I will refer only to those that in my view are most relevant to this decision.

[467] While the employer viewed this case as one involving poor performance, nevertheless, the grievor framed the issues largely as of human rights. Thus, I must address this aspect, regardless of any decision I might render on the performance issue. Therefore, I will first approach this decision from the human rights perspective. It is appropriate to set out certain principles in this respect.

[468] When dealing with issues that involve the *CHRA*, the Board possesses the powers set out in ss. 226(2)(a), (b), and (c) of the *FPSLRA*, which read as follows at all relevant times:

226 (2) An adjudicator or the Board may, in relation to any matter referred to adjudication,

(a) interpret and apply the Canadian Human Rights Act and any other Act of Parliament relating to employment matters, other than the provisions of the Canadian Human Rights Act that are related to the right to equal pay for work of equal value, whether or not there is a conflict between the Act being interpreted and applied and the collective agreement, if any;

(b) give relief in accordance with paragraph 53(2)(e) or subsection 53(3) of the Canadian Human Rights Act; and

(c) award interest in the case of grievances involving termination, demotion, suspension or financial penalty at a rate and for a period that the adjudicator or the Board, as the case may be, considers appropriate.

[469] Section 7 of the *CHRA* provides that it is a discriminatory practice to refuse to employ or to continue to employ an individual if doing so is based on a prohibited ground of discrimination.

[470] Section 3 of the *CHRA* provides that disability is among the prohibited grounds of discrimination, and s. 25 indicates that the term “disability” includes a mental disability, whether past or present.

[471] To demonstrate that the employer committed a discriminatory act, the grievor had to submit *prima facie* evidence of discrimination, namely, evidence that “... covers the allegations made and which, if they are believed, is complete and sufficient to justify a verdict in the complainant’s favour in the absence of an answer from the

respondent-employer” (see *Ont. Human Rights Comm. v. Simpsons-Sears*, [1985] 2 S.C.R. 536).

[472] To establish a *prima facie* case of discrimination, the grievor had to demonstrate that she possesses a characteristic protected against discrimination by the CHRA, that she suffered an adverse employment-related impact, and that the protected characteristic was a factor in the adverse impact (see *Moore v. British Columbia (Education)*, 2012 SCC 61).

[473] In *British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights)*, [1999] 3 S.C.R. 868, the Supreme Court of Canada indicated that in disability-related cases requiring accommodation, the employer must demonstrate that it provided accommodation to the point of undue hardship.

[474] The duty to accommodate has both procedural and substantive aspects (see *British Columbia (Public Service Employee Relations Commission) v. BCGSEU*, [1999] 3 S.C.R. 3 at para. 66), which were summarized as follows in *Panacci v. Treasury Board (Canada Border Services Agency)*, 2011 PSLRB 2 at paras. 85 and 86:

85 ... The procedural aspect requires the employer to seriously consider how it can accommodate the grievor. The substantive aspect of the duty to accommodate requires the employer to show that it could not have accommodated the grievor's disability without undue hardship.

86 The procedural aspect of the duty to accommodate requires the employer to obtain all relevant information about the grievor's disability. This could include obtaining information about the grievor's current medical condition, the prognosis for recovery, the ability of the grievor to perform the duties of her substantive position and her capabilities for alternate work. A failure to give any thought or consideration to the issue of accommodation is a failure to satisfy the duty to accommodate [ADGA Group Consultants Inc. v. Lane, 2008 CanLII 39605 (ON SCDC)] (ADGA, at para 106). In assessing whether the employer has met the procedural requirements of the duty of accommodation, its efforts must be assessed at the time of the alleged discrimination and not on the basis of "after-acquired" evidence (ADGA, at para 107).

[475] For the reasons that follow, I find that the grievor successfully established a *prima facie* case of discrimination with respect to her disability and that the employer failed to accommodate her.

[476] The grievor filed the accommodation grievance shortly after she sought to return to work following a period of certified sick leave. She alleged that the employer failed its duty to accommodate her and to reintegrate her into the workplace.

[477] The first issue I must determine is whether the grievor suffers from a disability that attracts the protection of the *CHRA*. I find that she did suffer from a disability, as defined in s. 25 of the *CHRA*, in that she suffered from a medically documented condition, whether past or present, which required accommodation.

[478] First, the medical evidence was not challenged. All of the evidence submitted, both documentary and testamentary, supports the grievor's contention that she suffered from a disability that had resolved itself sufficiently to allow her to resume working, with accommodation. None of the medical evidence contested her need for sick leave in the period of January until April 2014 or her readiness to resume work if accommodated.

[479] The only question for the employer at the relevant time appeared to be the specifics of the exact accommodation she would require on her reintegration, but it did not question her disability as such. I find that the employer was aware of and that it accepted the broad reasons for which she had required sick leave and that during her leave or in the period it sought to reintegrate her, it did not question her need for it. That is, the employer knew that her absence was related to mental-health issues caused by the conflictual relationship at work with Mr. Blois. Dr. Harrison clearly established this link in her medical certificates to the employer, which supported the grievor's absence. The employer accepted that conclusion and used it to justify her sick leave.

[480] The first medical certificate that Dr. Harrison issued, on December 31, 2013, states bluntly that the grievor had to be off work due to health concerns related to her "current work environment". Dr. Harrison reiterated this assertion on January 7 and 22, 2014, and again on February 12 and March 17, 2014, when she cleared the grievor for work. Also, before the grievor's absence on sick leave, Mr. Lemieux had suggested that she contact the Employee Assistance Program or take medical leave and had noted that she appeared stressed and even distraught at times. He reported some of his concerns to Mr. Blois in his email of December 4, 2013 (Exhibit G-9).

[481] The employer never questioned the grievor's need for extended sick leave, despite clearly being advised that the need related to her "work environment". However, once her doctor authorized her return to work in a "different work environment", the employer began to question the need for an accommodation, despite the fact that that need was based on the same facts that had been used to justify her absence in the first place. Specifically, the employer accepted her doctor's assertion that she was unable to work for reasons related to stress and her work environment during her extended absence yet questioned the medical recommendation that she not be returned to the same environment when she sought reintegration.

[482] I find that the employer entered no medical evidence that would allow it, or me, to question the grievor's medically documented condition and resultant accommodation need. The only medical evidence submitted before me indicated that she suffered from a disability, whether past or present, and that her accommodation request was medically supported. She established the first element of a *prima facie* case of discrimination, namely, she possesses a characteristic protected against discrimination by the *CHRA*.

[483] Accordingly, I find that the grievor does fall within the purview of the *CHRA* as a result of a disability and that therefore, she was entitled to accommodation. I note that the employer did not raise a defence that accommodating the grievor would cause it undue hardship.

[484] Therefore, I will now examine what transpired after the grievor submitted her doctor's note that cleared her return to work with accommodation, to determine whether the employer met its duty to her. To consider this issue, I must examine two periods. I will first examine the period between her submission of her medical certificate of March 17, 2014, and her assignment to the Legislative Governance Division. I will then examine whether that assignment met the employer's obligation to accommodate her in the circumstances.

[485] In a follow-up to Dr. Harrison's clearance of March 17, 2014, and her written comment that it "... would be beneficial for the patient if she was able to return in a different work environment", the employer deemed it unclear and sought further clarification. I am sympathetic to the employer on this point and accept its assertion that it needed more precision. However, rather than clearly setting out what

information the employer would need, Mr. Blois's email of March 21, 2014, to Mr. Rochon noted that the medical certificate failed "to specify any functional limitations" and that therefore, any accommodation was impossible for him to implement. Nevertheless, without specifically accepting in his email that the employer had a duty to accommodate the grievor, Mr. Blois advised Mr. Rochon that the grievor would remain off work until such clarifications were provided. While I understand the employer's desire for more precision at that time, I find its insistence on functional limitations without further explanation to be broad and in this case, unhelpful in terms of the information it sought from Dr. Harrison.

[486] Dr. Harrison responded to the request for further clarification promptly on March 24, 2014, but unfortunately, her response focused on the reasons for which the grievor required accommodation, rather than on the "functional limitations" that preoccupied the employer. She explained that the current tensions and stress in the workplace made it an unhealthy environment for the grievor and that therefore, a different work environment was recommended.

[487] The employer responded on March 26, 2014, pointing out that the response still failed to specify "functional limitations", making accommodation impossible. It asserted that Dr. Harrison seemed to indicate that the grievor was not in fact fit for work.

[488] While I may be able to understand the logic of the employer's view on the issue of functional limitations that would delineate the accommodation measures, I see no grounds on which it could claim that the grievor was squarely unfit for any work, and no explanation was provided in the testimony or arguments for such a claim. I see no reason for its allegation that the medical certificates indicated that the grievor was not ready to return to work.

[489] Also at this point, I question the employer's assertion that it needed yet more precision. If it were truly confused by Dr. Harrison's recommendation, it would have been simple enough to set out clear questions for her to answer. But the employer did not and instead chose to insist on "functional limitations", without a further explanation as to what it meant. Only on March 28, 2014, did Mr. Blois write to Mr. Rochon, offering to put him in contact with HR professionals who could help the union define the functional limitations (Exhibit E-1, tab 41), rather than providing the

union with a clear statement of the information that the employer felt it required, as was its responsibility. He also advised the union that the employer would seek an assessment from Health Canada.

[490] Mr. Rochon responded very quickly, advising the employer that he opposed the challenge to Dr. Harrison's assessment and the resort to Health Canada. He further reiterated the grievor's accommodation need. After further correspondence between the parties, Ms. M. Laframboise wrote to Dr. Harrison on April 24, 2014, finally asking specific questions and, for the first time, including a "Functional Abilities Form" for Dr. Harrison to complete.

[491] Dr. Harrison responded on April 29, 2014, having completed the Functional Abilities Form. This time, she specified in writing several times that the grievor was fully able to return to the workplace as long as she was under a new supervisor. Despite Dr. Harrison's clear instructions, and without any further explanation, Ms. M. Laframboise wrote to Mr. Rochon on May 14, 2014, stating that Dr. Harrison's response was still ambiguous and that a Health Canada assessment was required.

[492] Mr. Rochon then responded on May 23, 2014, expressing disappointment, reiterating the employer's duty to accommodate, and advising Ms. M. Laframboise that the grievor objected to bypassing her physician's assessment. Only when it received Health Canada's final evaluation did the employer agree to begin the search for a new placement for the grievor.

[493] As stated earlier in this decision, I find that on the basis of the grievor's medical evidence, which was supported by the results of Health Canada's assessment, she suffered from a medical disability, which had resolved itself to the point of allowing her to return to work if she were accommodated with a new supervisor.

[494] I also find that the employer was aware of the specific need for a new reporting relationship by April 29, 2014, at the latest, and that as of that date, it was without a factual basis that would warrant referring the grievor to Health Canada and forcing her to remain on sick leave in the meantime.

[495] The medical evidence before that date indicates a need for a "new work environment" in the context of a long-standing dispute between the grievor and Mr. Blois that had resulted in a harassment complaint against him and sick leave based

on the grievor's mental-health concerns, which the employer did not question and had even itself suggested to the grievor not long before. The employer argued that despite this background, it was still unsure just what was required in terms of a "new work environment" for the grievor.

[496] The employer relied on Health Canada's advice that the grievor should remain off work until its assessment was completed. In my view, the employer did not have legitimate reasons for bypassing Dr. Harrison. It did not raise any of the standard reasons generally provided to justify resorting to Health Canada after Dr. Harrison's clear statement of April 29, 2014. The employer did not allege that Dr. Harrison was biased or had lost her objectivity as a doctor. As Ms. M. Laframboise testified, the employer justified the referral to Health Canada on the basis that Dr. Harrison had not supplied it with information concerning the grievor's medical condition or disability, but I find that as of April 29, 2014, the employer had sufficient information on her disability and how it was required to accommodate her.

[497] I find that as of April 29, 2014, the medical restriction of new supervision was clearly stated by Dr. Harrison and that the employer then had a few weeks in which to reintegrate the grievor into the workplace, despite how difficult it found it to be and regardless of her prior performance issues. However, the employer did not reinstate her until the fall of 2014, after it received the final assessment from Health Canada. By failing to, it failed its duty to accommodate the grievor from April 29, 2014, until her reintegration on assignment in the Legislative Governance Division.

[498] Given the employer's firm stance in its evidence and argument that it did not have a duty to accommodate the grievor, I am left without submissions as to the reasonable period it would have needed to accommodate her as of April 29, 2014. In my view, one month to fulfil its duty to accommodate should have been sufficient in the circumstances.

[499] I will next examine the time the grievor spent in the Legislative Governance Division, to determine whether her assignment met the duty she was owed. However, first, I should note that the employer entered evidence to the effect that finding her a position following the Health Canada assessment was difficult, given her previous performance issues. I have no doubt that it was difficult. However, the problem lies in the fact that at that time, the employer largely approached the job search in terms of

the grievor being a problematic employee for whom it needed to find a right fit rather than from the perspective of an employer with a legal obligation to accommodate an employee. Mr. D'Aoust testified that he contacted three senior managers in the employer's Science and Technology branch and that he undertook other efforts to place the grievor in another area. He did not specify those other efforts. Other than these contacts, it does not appear that the employer engaged in a methodical approach to searching for another position for the grievor. Employees requiring accommodation have a right to be placed in positions for which they are qualified and are exempt from the usual staffing requirement to prove that they are qualified for a given position.

[500] This is evidenced in Mr. D'Aoust's letter to the grievor dated October 3, 2014, advising her of her assignment to the Legislative Governance Division. In it, he reiterates the employer's position that as the Health Canada assessment specified no medical condition and identified no functional limitations, accommodation was not required. However, he noted that as an employer has an overall duty to ensure that all employees perform to the best of their abilities, and as the grievor's future health might be impacted were she to return to the same reporting structure, an assignment had been found for her.

[501] Ms. M. Laframboise's evidence did indicate that she had taken the medical recommendation into account in her search for a position, but it does not support a finding that she approached the job search from the perspective of a true accommodation.

[502] The evidence reveals that at the time in question, the employer's primary position was that no accommodation was needed. I already rejected this stance when I concluded that the grievor had a documented medical need for accommodation. Therefore, I find that she had a right to be accommodated, given her health situation, and while it might have been difficult to convince others to take her on, the employer paid insufficient attention to the fact that she had a right to such accommodation, regardless of her prior performance.

[503] I find that while Ms. M. Laframboise was mindful of the medical certificate requirement of a new supervisor for the grievor, the facts are insufficient to allow me to find that the employer seriously sought to accommodate her. Indeed, it specifically denied that it had any such duty on several occasions and continued to argue that at

the hearing. Therefore, I conclude that the employer failed its procedural duty to accommodate her.

[504] The employer did find her an assignment in the fall of 2014, even if Mr. D'Aoust's letter to the grievor, advising her of her new placement, clearly denied that the employer had any duty to accommodate her. Therefore, I must now consider whether by assigning her to the Legislative Governance Division, the employer met its substantive duty to accommodate her.

[505] It is important to note on this question that in its submissions, the employer did not argue that it had reached the point of undue hardship or that it had even considered the undue hardship issue. Its argument on accommodation was to simply state first that it had no duty to accommodate the grievor and second that in the alternative, if it had the duty, it had accommodated her. The termination letter makes no mention of undue hardship being reached. It is written entirely in the language of a performance-related termination. I was offered no evidence on the employer's evaluation of undue hardship in this case and indeed, whether such an evaluation had been considered. Accordingly, given my decision and the circumstances of this matter, I need not address whether the employer reached the point of undue hardship.

[506] While the employer did in fact find the grievor an assignment with a new reporting relationship, it did not do so in the context of an accommodation, and its actions were problematic as a result. It argued that it had no duty to accommodate her in her assignment to the Legislative Governance Division, but that if it did have that duty, it did accommodate her. Even if inadvertent accommodation is possible, I find that the employer's actions failed to satisfy the duty to accommodate.

[507] Employees requiring accommodation are entitled to work for which they are qualified. The intention of anti-discrimination provisions is to remove barriers for the disabled, to allow them to be productive members of the workforce. It would make a mockery of such provisions if employers were allowed to "accommodate" employees by offering them work for which they are clearly unqualified and if they were permitted to terminate such employees when things do not work out as a result. In other words, setting an employee up to fail in an "accommodation" could not meet the duty to accommodate. The grievor argued that even if her assignment to the Legislative

Governance Division could be viewed as a “proper accommodation”, it was insufficient, given her lack of qualifications. For a number of reasons, I agree.

[508] There was evidence to the effect that the Legislative Governance Division expressed concern when it was first contacted about the grievor’s lack of background in legislation. While a law degree was not required for the Division’s work, nevertheless, many of the employees had legal backgrounds. Ms. Farquharson testified that the Division was the focal point of law reform for Environment Canada and that it developed proposals for amendments to existing or for new environmental legislation. The evidence also disclosed that those within the Division determined that they could adjust the work to fit her qualifications, without having discussed these issues with the grievor and based on impressions formed from reading her résumé.

[509] As set out in *Panacci*, at para. 87, the search for accommodation requires that the employer conduct an individualized assessment of the employee’s limitations and the requirements of an appropriate accommodation. In this case, the grievor had a documented medical need for accommodation, her limitation being that she had to report to a different supervisor, which meant placing her in another new work unit.

[510] However, rather than assessing whether the assignment in the Legislative Governance Division met the grievor’s qualifications, the employer was content to assign her there based on the Division’s mere impressions that it would find her work within her capabilities, without first verifying with her in any substantive way her qualifications with respect to legislation or how it planned to work around her inexperience in that area.

[511] The evidence showed that the employer determined that the grievor was qualified for the duties it had decided to assign to her based on two items in her résumé. However, neither she nor her union representative, Mr. Rochon, was consulted about the suitability of the assignment to her qualifications or about her résumé. Had the employer inquired, she could have explained that as she testified, the two items had been limited in scope, and that in one of the positions, she had access to Department of Justice lawyers.

[512] Furthermore, concern with the grievor’s lack of background was expressed when the Legislative Governance Division assignment was being considered. In an email to Ms. Bourbonnais and others on October 2, 2014 (Exhibit G-7), Ms. N. Laframboise

stated that Mr. Moffett and Ms. Neamtz had advised her that the grievor did not have the legislative background required for the assignment. Both Ms. Farquharson and Ms. Neamtz testified that they sought someone who could hit the ground running. Ms. Farquharson testified that the grievor was not that type of person. Ms. MacLellan's email of December 18, 2014, to Ms. Neamtz and others in management (Exhibit G-16) confirmed that the grievor needed a strong legislative background for her assignment.

[513] Ms. MacLellan noted in her email that the grievor's inability to work on more than one file at a time was "... partially a result of the employee not having a strong legislative background, which is a qualification for the Senior Legislative Policy position she occupies." This clearly indicates that early concerns with the grievor's qualifications were borne out and that her lack of legislative background was affecting her ability to perform to the level expected of her. In other words, the employer's failure to accommodate with work for which she was qualified was a factor in her being found to lack the competence to properly perform in the Legislative Governance Division.

[514] Despite this serious concern, the evidence disclosed that the grievor was never offered any training on legislative interpretation, despite the fact that management had identified this issue as having a substantial effect on her performance. Furthermore, by the time of her return to work and assignment, she had been off work for almost a year and could have benefited from a period of familiarization. Lastly, the evidence disclosed that the grievor worked in the Legislative Governance Division only for 3.5 months during the period from the start of her assignment on October 15, 2014, to April 1, 2015, the date of Ms. Neamtz's unfavourable performance appraisal of her.

[515] With respect to the training issue, the evidence shows that before her assignment to the Legislative Governance Division, the employer's attitude was to leave the grievor on her own. For example, Mr. Blois testified that he encouraged her to avail herself of training opportunities while being mindful of the budget. He stated that coaching for her would have consisted of interacting with other project leaders. Mr. Lemieux said that the grievor's learning and development plan was the same as that of other employees and that one could not be imposed. Mr. D'Aoust said that generally, she could request training of management.

[516] During her assignment in the Legislative Governance Division, those managers who were responsible for supervising her appear to have continued in the same vein when it came to training. No one in management spoke to her or identified specific training requirements to enable her to do the work. Ms. Farquharson said that other employees in the Division could have helped the grievor. While the employer might have been well intentioned and there is no indication of bad faith, it appears to have been befuddled as to how to deal with the grievor in the circumstances. However, that could not justify its failure to provide her with the training she needed to succeed in the assignment.

[517] In *Hydro-Québec v. Syndicat des employé-e-s de techniques professionnelles et de bureau d'Hydro-Québec, section locale 2000 (SCFP-FTQ)*, 2008 SCC 43, the Supreme Court of Canada assessed the scope of the duty to accommodate. The employer's duties were set out as follows:

...

[14] ... the employer must accommodate the employee in a way that, while not causing the employer undue hardship, will ensure that the employee can work. The purpose of the duty to accommodate is to ensure that persons who are otherwise fit to work are not unfairly excluded where working conditions can be adjusted without undue hardship.

[15] ... the purpose of the duty to accommodate is not to completely alter the essence of the contract of employment, that is, the employee's duty to perform work in exchange for remuneration....

[16] The test is not whether it was impossible for the employer to accommodate the employee's characteristics. The employer does not have a duty to change working conditions in a fundamental way, but does have a duty, if it can do so without undue hardship, to arrange the employee's workplace or duties to enable the employee to do his or her work.

...

[518] In this matter, the grievor's disability was not of a physical nature that the employer could accommodate by, for example, modifying her workstation. While the employer assigned her to the Legislative Governance Division with a new supervisor after nearly a year's absence from the workplace, it ignored clear indications that she did not have the requisite background to enable her to carry out the duties of that assignment, and when early fears on this front began to materialize, nothing was done

to assist her in this respect. However, the employer could easily have arranged for one of the departmental lawyers or for somebody in the Legislative Governance Division who had formal legal training, including Ms. Farquharson, Ms. Neamtz, and Mr. Beaudoin, to meet with the grievor with a view to providing her with an understanding of the legislative process sufficient to enable her to succeed in the assignment. There was also no evidence that the employer considered another placement or even returning her to her substantive position and applying its duty to accommodate, such as having her report to a supervisor other than Mr. Blois. This was despite the fact that the terms of her assignment agreement stated that she was return to the Audit and Evaluation Branch after it was completed.

[519] Therefore, in the circumstances, I find that by assigning her to the Legislative Governance Division, despite clear indications that she did not have the requisite background to enable her to carry out the duties of that assignment, the employer failed in its duty to accommodate her.

[520] The grievor suffered an employment-related adverse impact in that her employment was terminated. That adverse impact resulted from the employer's failure or refusal to accommodate her. Therefore, the second element of a *prima facie* case of discrimination has been met. It remains to be determined whether her disability was a factor in her termination.

[521] As I have found earlier in this decision, the grievor suffered from a disability and thus possessed a characteristic protected against discrimination by the *CHRA*. As such, she was entitled to be accommodated and the employer failed to do so, which led directly to her termination. As I found at paragraph 499 of this decision, the employer approached the job search in terms of the grievor being a problematic employee for whom it needed to find a right fit rather than from the perspective of an employer with a legal obligation to accommodate an employee. I have found in the preceding paragraphs that while the employer did assign the grievor to the Legislative Governance Division, it failed to provide her with the training and support to enable her to succeed and thus did not accommodate her. Accordingly, I find that the grievor established a *prima facie* case of discrimination, which the employer did not successfully refute. Therefore, I find that that the employer violated the *CHRA* and article 16 ("No Discrimination") of the collective agreement.

[522] In view of my findings on the human rights aspects of the grievances, I no longer need to address the performance issue.

[523] Therefore, in light of my earlier finding that one month should have been sufficient in the circumstances to allow the employer to fulfil its duty to accommodate the grievor with respect to her return to work following Dr. Harrison's April 29, 2014, assessment that she was fit to work, I find that the grievor is entitled to be compensated from May 29 to October 14, 2014. I order the employer to reinstate her sick leave credits for that period and to compensate her fully, with interest, with respect to any pay or benefits lost during it.

[524] I also order the employer to reinstate the grievor to a position for which she is qualified at the EC-06 group and level, or the equivalent, as of June 12, 2015, with pay and interest and without loss of benefits, as of June 12, 2015.

[525] The grievor also requested damages under ss. 53(2)(e) and 53(3) of the *CHRA* for both grievances. As the Board has indicated several times, the issue of the amount of compensation to award is not an exact science. As was noted by the Board in *Stringer v. Treasury Board (Department of National Defence) and Deputy Head (Department of National Defence)*, 2011 PSLRB 110 (application for judicial review allowed on other grounds in 2013 FC 735), it is apparent that decisions on this issue do not often include a detailed analysis of the rationale used to arrive at a specific amount. However, the Board also found that it was clear that the seriousness of the psychological impact on the grievor in that case was the principal factor in awarding damages under s. 53(2)(e) and that recklessness was the principal factor in damages awarded under s. 53(3).

[526] It should also be noted that neither party made any submissions on the issue of the amount of damages to be awarded in the event that either or both of the grievances were allowed. However, the grievor did provide some jurisprudence on the human rights issue that also included discussions on such damages.

[527] As the grievor requested damages for each of her grievances, I will address the issue separately for each one.

[528] With respect to the accommodation grievance, which covers the employer's failure to facilitate her return to work from May 29 to October 15, 2014, the grievor

entered no evidence on the impact of the employer's actions on her. In *Canada (Attorney General) v. Tipple*, 2011 FC 762 (appeal allowed on other grounds in 2012 FCA 158), the Federal Court stated that an adjudicator should not award damages for psychological injuries in the absence of evidence of such injuries, preferably provided by a health professional. Furthermore, the Court stated, such evidence should indicate that the injury is significant and long-lasting. Therefore, in the absence in this case of any evidence that the employer's failure to facilitate the grievor's return to work caused her significant and long-standing injury, and in the absence of any submissions on this issue, I decline to award any damages for pain and suffering with respect to the first grievance.

[529] As for damages under s. 53(3) of the *CHRA*, as did the Board in *Hotte v. Treasury Board (Royal Canadian Mounted Police)*, 2016 PSLREB 122, I find that the employer's conduct during the period in question was an example of its ignorance of its obligations, which constitutes reckless conduct under s. 53(3). However, I also find that special compensation at the lower end of the scale is justifiable, given the factually complicated circumstances in which it found itself at that time, the relatively brief period involved, and the absence of bad faith on its part. Therefore, I award the grievor \$5000 in damages under s. 53(3) with respect to the accommodation grievance.

[530] With respect to the termination grievance, the grievor did submit some evidence on the issue of damages for pain and suffering under s. 53(2)(e) of the *CHRA* and the impact of the termination on her. She testified that she had felt hopeless and humiliated, had experienced difficulty sleeping, and had sought the assistance of psychotherapy, which was still ongoing as of the hearing. The employer did not contest or contradict this evidence. As stated earlier, neither party made any submissions on the issue of damages.

[531] I have read the jurisprudence submitted by the grievor and find that this case is most similar to that of *Pepper*, in that the employer ignored the doctor's recommendation of a new supervisor, failed its duty to accommodate the grievor, and terminated his employment precipitously. However, I also find that in this case, the employer's actions were less egregious than those in *Pepper*, given the factual circumstances of each case.

[532] I find that the evidence submitted by the grievor with respect to the termination grievance, although brief and minimal, is nonetheless sufficient to entitle her to damages for pain and suffering, and I award her \$6000 under this provision.

[533] Finally, with respect to the grievor's request for damages under s. 53(3) of the CHRA specified in her termination grievance, I decline to award any. I have already awarded damages under this provision for May to October 2014, as the evidence for that period disclosed a clear duty on the employer's part to accommodate her, which it ignored. I find that the factual situation as of the termination was far less clear and that the employer's actions at that point were not reckless and certainly not indifferent or done in bad faith.

V. Sealing order

[534] As stated earlier in this decision, upon a referral from Health Canada, Dr. Hébert conducted an independent psychological evaluation of the grievor, and his report was entered into evidence (Exhibit G-21, tab 25).

[535] The Board operates on the open court principle, which is set out in its "Policy on Openness and Privacy" posted on its website. In accordance with the open court principle, the Board conducts its hearings in public, save for exceptional circumstances. The Board departs from its open justice principles and may grant a confidentiality order concerning specific evidence when such a request accords with recognized legal principles.

[536] In *Basic v. Canadian Association of Professional Employees*, 2012 PSLRB 120 at paras. 9 to 11, the Board went through the applicable legal principles in detail, which may be summarized as follows: public access to exhibits and other documents filed in legal proceedings is protected by the right to freedom of expression. However, occasions arise when freedom of expression and the principle of open and public access to hearings must be balanced against other important rights, including the right to a fair hearing. The Board must balance these competing rights and interests when determining whether to grant a confidentiality order. In making such a determination, the Board must apply the *Dagenais/Mentuck* test, as indicated as follows at paragraph 11 of *Basic*:

11 *The Dagenais/Mentuck test was developed in the context of requests for publication bans in criminal proceedings. In Sierra*

Club of Canada, the Supreme Court of Canada refined the test in response to a request for a confidentiality order in the context of a civil proceeding. As adapted, the test is as follows:

...

- 1. such an order is necessary in order to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonably alternative measures will not prevent the risk; and*
- 2. the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings.*

...

[537] Dr. Hébert's report contains the grievor's contact information as well as sensitive medical information about her and her family. In my view, the report should not be in the public domain. There is a serious risk to the privacy of the grievor and to the members of her family. Accordingly, I order sealed Dr. Hébert's report marked as Exhibit G-21, tab 25.

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

(The Order appears on the next page)

VI. Order

[539] The grievances are allowed.

[540] I order the following:

- a. that within 60 days of the date of this decision, the employer reinstate the grievor's sick leave credits for the period of May 29 to October 14, 2014;
- b. that within 60 days of the date of this decision, the employer compensate the grievor fully with respect to any pay or benefits lost during the period of May 29 to October 14, 2014, less the customary deductions;
- c. that the grievor is reinstated at the EC-06 group and level, with pay and without loss of benefits, as of June 12, 2015;
- d. that within 60 days of the date of this decision, the employer reimburse the grievor her salary at the EC-06 group and level as of June 12, 2015, less the customary deductions;
- e. that upon the grievor's presentation of receipts, the employer reimburse her expenses incurred for dental and psychotherapy fees not covered by the employer's insurance plans, to the extent of the coverage to which she would have been entitled had she not been terminated;
- f. that within 60 days of the date of this decision, the employer reinstate the grievor's salary at the EC-06 group and level and her benefits as of the date of the reimbursement ordered at paragraph 540(d) of this decision;
- g. that within 60 days of the date of this decision, with respect to Board file number 566-02-10066, the employer pay the grievor special compensation in the amount of \$5000 pursuant to s. 53(3) of the *CHRA*; and
- h. that within 60 days of the date of this decision, with respect to Board file number 566-02-11535, the employer pay the grievor damages for pain and suffering in the amount of \$6000 pursuant to s. 53(2)(e) of the *CHRA*.
- i. that within 90 days of this decision, the employer reinstate the grievor to a position for which she is qualified at the EC-06 group and level, or the equivalent, and that it comply with any medically documented accommodation that she may require.

[541] I order the employer to add interest yearly to the amounts owed under paragraph 540(b), calculated at the annual rate based on the Bank of Canada's official rate (monthly data). Interest began to accrue on October 14, 2014.

[542] I order the employer to add interest yearly to the amounts owed under paragraph 540(d), calculated at the annual rate based on the Bank of Canada's official rate (monthly data). Interest began to accrue on June 12, 2015.

[543] I order the employer to add interest yearly to the amounts owed under paragraph 540(e), calculated at the annual rate based on the Bank of Canada's official rate (monthly data). Interest began to accrue one month following the date on which each expense was incurred.

[544] The Board remains seized for 120 days following the date of this decision, with respect to the calculation of any amounts owed under paragraphs 540 to 543.

[545] I order sealed Dr. Hébert's report dated September 11, 2014, and marked as Exhibit G-21, tab 25.

December 17, 2020.

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