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File: 561-34-714

Citation: 2021 FPSLREB 18

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

PAUL SKINNER

Complainant

and

PROFESSIONAL INSTITUTE OF THE PUBLIC SERVICE OF CANADA

Respondent

Indexed as
Skinner v. Professional Institute of the Public Service of Canada

In the matter of a complaint made under section 190 of the *Federal Public Sector Labour Relations Act*

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

For the Complainant: Raymond Lazzara

For the Respondent: Steven Welchner, counsel, and Martin Ranger, Professional Institute of the Public Service of Canada

Heard at Vancouver, British Columbia, November 1 to 4, 2016; April 24 to 28 and July 24 to 28, 2017; and February 20 to 23 and April 30 to May 3, 2018; and in Ottawa, Ontario, October 29 and 30, 2018.

REASONS FOR DECISION

I. Complaint before the Board

[1] On September 19, 2014, Paul Skinner ("the complainant") made a complaint under s. 190(1)(g) of the Act now named the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; *FPSLRA*) against the Professional Institute of the Public Service of Canada (PIPSC or "the Institute"), alleging that it had harassed and bullied him in a variety of ways, which will be set out in this decision.

[2] Mr. Skinner was, at the relevant time, a member of the Board of Directors (BOD) of the Institute and occupied the position of Regional Director for its British Columbia/Yukon ("BC/Yukon") Region. He was employed as an auditor with the Canada Revenue Agency (CRA) but has since retired. He no longer occupies a political position with PIPSC.

[3] 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) also came into force (SI/2014-84). Pursuant to s. 393 of the *Economic Action Plan 2013 Act, No. 2*, a proceeding commenced under the *Public Service Labour Relations Act* (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 *Economic Action Plan 2013 Act, No. 2*.

[4] On June 19, 2017, *An Act to amend the Public Service Labour Relations Act, the Public Service Labour Relations and Employment Board Act and other Acts and to provide for certain other measures* (S.C. 2017, c. 9) received Royal Assent, changing the name of the PSLREB and the titles of the *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*. Note that all references to "the Board" in this decision include the Board and all its predecessors.

II. Introduction

[5] In the summer and early fall of 2016, the parties were engaged with the Board in scheduling hearing dates, at which point the complainant's representative made a disclosure request, parts of which the respondent contested. As a result, on September 22, 2016, I issued a production order.

[6] The highly political and emotional nature of the contested events carried over into the hearing process. In addition to the contested request for disclosure, the parties also had pre-hearing issues with witness lists, extensions of time, and the identification of the precise sections of the *FPSLRA* engaged by the complaint. As well, at the hearing, a number of objections were raised by both sides.

[7] The hearing of this complaint took place over 24 days and involved many witnesses, numerous exhibits, and some acrimony between the parties. This was unsurprising, given the highly charged events in issue, which concern allegations of politically motivated actions. Indeed, in an email dated May 8, 2014 (Exhibit 1, tab 9), to the BOD, the complainant directly stated that the circumstances resulted from the Institute's Executive Committee's (EC) hatred of him and were politically motivated. One has only to read the 8 pages of allegations that the complainant attached to the complaint form to understand how contested the events became.

[8] The evidence also revealed that the present complaint is but part of a longer history involving the discipline imposed following the three internal complaints made against Mr. Skinner that are at the heart of this complaint but also many individuals on the BOD and the EC, and others occupying elected positions. Essentially, this complaint is part of a deep rift that occurred within PIPSC and that resulted in much acrimony and in several complaints being made both within PIPSC and with the Board by Mr. Skinner and others, some of which have already been the subjects of decisions issued by the Board.

[9] The preliminary investigation report of the investigator (Exhibit 2, tab 25) assigned to investigate the three internal complaints and the ensuing discipline which led to this unfair-labour-practice complaint outlines the views of several witnesses to the effect that the BOD was divided into cliques or factions, one of whom described it as a snake pit. The investigator described the BOD environment as negative, divisive, and tension-filled.

[10] Further, the evidence disclosed that the acrimony continued following the filing of the present complaint. PIPSC members obtained copies of it, and in October of 2014 Gary Corbett, a former president of PIPSC, wrote to the BOD, seeking direction on what to say when questioned about it by members. Further to his request, Debi Daviau, the then-president of PIPSC, drafted a response on behalf of PIPSC to be sent to all stewards, stating that PIPSC would vigorously defend itself. It appears from the 2014 "National Election Record of Formal Complaints" (Exhibit 36) that the note to stewards (Exhibit 35) prompted Mr. Corbett to make complaints against Ms. Daviau and Shirley Friesen; Mr. Skinner also made internal complaints against them. As these issues and internal complaints post-date the present complaint, I find that they are not before me and accordingly, I need not deal with them.

[11] With respect to the lengthy history between Mr. Skinner and PIPSC that forms the backdrop to the present complaint, it is important to note that harassment complaints were made in 2012 against him by two members (Exhibit 2, tabs 57 and 58). The behavioural allegations against him were found not to constitute harassment. Nonetheless, with respect to one of the complaints, Mr. Skinner was advised that his tone had been unprofessional, and he was counselled about how he communicated with others.

[12] This complaint alleges that three PIPSC elected officials harassed and bullied the complainant by filing unmeritorious internal complaints against him. Mr. Skinner alleged that the three colluded to intimidate, belittle, and harass him. The allegations in the three internal complaints, all of which were made within months of each other, involved exchanges in which Mr. Skinner is alleged to have used an aggressive tone and approach towards fellow elected members. These internal complaints were investigated. As a result, corrective measures were imposed on Mr. Skinner, which he then appealed. Once the appeal decision was rendered, which did not satisfy him, the present complaint was made.

[13] The allegations in the present complaint concern individuals occupying elected office and at the time relevant to this complaint serving on PIPSC's BOD, the EC, or the BC/Yukon Regional Executive Committee.

[14] The Institute's BOD is composed of 15 individuals and includes those who occupy positions on the EC. The EC is in turn composed of the Institute's president

and its 4 vice-presidents. The complainant alleged that 3 of the members, Ms. Daviau, Shannon Bittman, and Ms. Friesen, colluded in an effort to intimidate, belittle, and humiliate him.

[15] Broadly speaking, and as set out in paragraph 1 of his complaint narrative, the complainant alleged that a group of three friends, Ms. Daviau, Ms. Bittman, and Ms. Friesen, were engaged in a vendetta to ruin his reputation as the regional director of PIPSC's BC/Yukon region. He alleged that the source of this campaign was his political support of Raymond Lazzara, the Audit, Financial and Scientific Group (AFS) president, and Mr. Corbett and the fact that he had presented resolutions at the Institute's annual general meeting (AGM) proposing to reduce the number of vice-presidents from four to one.

[16] I will return to the allegations in the complaint later in this decision. First, I will set out the facts that form its basis. As the complaint is lengthy and detailed, it is best to first grasp the facts before understanding the complaint's basis.

III. Factual background

[17] As stated, the events forming the basis of the present complaint began with the filing of three internal complaints against Mr. Skinner. I will now summarize the facts surrounding each complaint and the subsequent events, up to the filing of the present complaint.

A. The Friesen complaint and counter-complaint

[18] The first complaint against Mr. Skinner was made by Ms. Friesen ("the Friesen complaint"), who was then one of four vice-presidents at the Institute. As such, she was also a member of the EC. Ms. Friesen is employed by the Correctional Service of Canada as a psychologist.

[19] In June 2013, she made a harassment complaint alleging that Mr. Skinner had called her "full of s***" and "a hypocrite" during a BOD meeting and that he had sent her an abusive email. She also alleged that it was not the first time she had observed him attack a person's character.

[20] Mr. Skinner was provided with a copy of the complaint on June 17, 2013, together with copies of the Institute's *Harassment Policy* and the 2009 *Dispute Resolution and Discipline Policy* and was advised that the complaint would be dealt

with in accordance with those policies. The letter informing him of the complaint noted that Ms. Friesen was open to an informal resolution of the matter, with the assistance of a neutral third party. He was strongly encouraged to avail himself of this option.

[21] Mr. Skinner expressed no interest in that option and instead advised the Institute that he intended to make a harassment complaint against Ms. Friesen. He filed his response and made his counter-complaint in July 2013 (Exhibit 2, tab 19). He characterized Ms. Friesen's complaint as frivolous and the result of a political vendetta.

[22] According to the counter-complaint, in which the complainant largely simply denied the allegations against him, he never lost his temper during the meeting in issue, and in fact, Ms. Friesen "went berserk" when he questioned the need for four PIPSC vice-presidents, such that the President was compelled to call for a recess, to allow her to calm down. Mr. Skinner also alleged that Ms. Friesen abused her position to stifle discussion of the proposed amendment and that in fact, she had "screamed" at him. He also said that her reference to him as a character assassin was baseless, unsupported by evidence, and a further abuse of authority. With respect to the abusive email (Exhibit 2, tab 14) referred to in Ms. Friesen's complaint, Mr. Skinner had accused her of trying to censor the BC/Yukon Regional Executive, and he had threatened that she would be asked to leave the Regional Council meeting if she sought to influence it. Mr. Skinner denied having been the email's architect as she alleged, stating that instead it had been the work of the entire BC/Yukon Regional Executive.

[23] In September 2013, the complainant was advised that Nicole Price of Butler Workplace Solutions had been retained to investigate and provide the EC with a report on both the Friesen complaint and his counter-complaint.

[24] On November 7, 2013, Ms. Friesen raised additional allegations (Exhibit 2, tab 25) related to Mr. Skinner's statement to his BC/Yukon Regional Executive that the Professional Recognition and Qualification Committee, which she chaired, was "useless". She viewed this as continuing harassment as well as an attack on her reputation.

[25] Mr. Skinner in turn filed additional allegations on December 19, 2013 (Exhibit 2, tab 25). They referred to an incident in which Ms. Friesen allegedly referred to him as

"cruel" for statements he made at an AGM that were critical of Ms. Daviau. A second incident outlined referred to a BOD meeting on December 13, 2013, during which Ms. Friesen allegedly made offensive remarks about directors and stated that Mr. Skinner was "ridiculous". This comment was allegedly made in the context of a hotly debated policy that would have seen only directors chair committees.

[26] Both the initial and additional allegations were considered by Ms. Price in her report. As well as interviewing numerous other witnesses, the investigator met with Mr. Skinner on several occasions between November 2013 and February 2014. Mr. Skinner's two representatives were present via conference call during his interview with the investigator in November 2013. In March 2014, he was provided with a copy of the preliminary investigation report (Exhibit 2, tab 25) and was given 14 days in which to respond. He requested and received an extension to reply (Exhibit 2, tab 28). On April 16, 2014, he provided his 15-page response, with attachments (Exhibit 2, tab 29).

[27] Among other things, Mr. Skinner defended his manner of speaking by stating that as a result of a 30-year close familial relationship, he had "taken on certain cultural traits" that he hoped would not be used against him. As for the fact that he can get red in the face, he explained that it is caused by his high blood pressure and anxiety. He also took exception to the fact that Ms. Friesen's "past history of filing complaints, slandering and maligning people" was not considered by the investigator.

[28] The final report was issued in early May 2014. While it found that neither individual had been guilty of harassment, it nonetheless found that each had been guilty of inappropriate conduct.

[29] With respect to Mr. Skinner, the investigator noted that he lacked self-awareness with respect to his conduct when agitated and noted instances in which he had become loud and aggressive during her interviews with him. While his aggressive tone of referring to Ms. Friesen as being "full of s***" and "a hypocrite" had the potential to fall within the definition of "harassment", the investigator concluded that one such incident did not qualify unless it was sufficiently egregious, which this one was not. The investigator noted that both parties were prone to emotional responses and that both were responsible for contributing to unprofessionalism at the BOD level. Given that Mr. Skinner in particular saw no room for improvement in his conduct, the

investigator noted that she expected further conflict to arise between him and Ms. Friesen.

B. The Mertler complaint and counter-complaint

[30] The second complaint was made by Marie Mertler ("the Mertler complaint"). At the relevant time, she was a member of the BC/Yukon Regional Council.

[31] On July 1, 2013, she made her complaint of harassment and bullying against Mr. Skinner following a meeting of the Regional Council. She alleged that during that meeting, he had approached her and had said in her ear, "Marie, would you wake the f*** up and vote with your Executive."

[32] As with the Friesen complaint, a copy of the Mertler complaint and relevant Institute policies was forwarded to Mr. Skinner. He was advised that it would be investigated by Ms. Price and was strongly encouraged him to participate in informal conflict resolution.

[33] Again, Mr. Skinner made a counter-complaint, which was included in Ms. Price's investigation. His counter-complaint merely alleged that Ms. Mertler's allegations were false and malicious and therefore constituted harassment.

[34] Despite this, the investigation report and Mr. Skinner's response to the preliminary investigation report indicate that he acknowledged having made the remark in an irritated tone because he had believed that Ms. Mertler had dozed off. He also advised the investigator that he had immediately apologized to Ms. Mertler when she objected to his remark.

[35] Mr. Skinner was provided with a copy of the preliminary investigation report in February 2014 (Exhibit 2, tab 36) and was given a deadline of 14 days in which to respond, which he met (Exhibit 2, tab 38).

[36] The final report was issued on March 11, 2014. As with the Friesen complaint, harassment was not found, given that it was a singular occurrence, but unacceptable conduct was noted. Again, the investigator noted that Mr. Skinner sought to justify his conduct rather than to take responsibility for it. The report concluded that he would likely continue to encounter conflict. His counter-complaint was deemed

unsubstantiated, given that Ms. Mertler's complaint was found not vexatious or made in bad faith.

C. The Denton complaint and counter-complaint

[37] The third complaint against Mr. Skinner involved bullying, harassment, and abuse of authority and was made on August 1, 2013, by Sabina Denton, a member of the BC/Yukon Regional Executive (Exhibit 2, tab 41) and a delegate to the Regional Council ("the Denton complaint"). While she was a CRA employee, she had never worked with Mr. Skinner.

[38] In her complaint, Ms. Denton accused Mr. Skinner of undermining her position and of using his authority as the regional director to demoralize and marginalize her. She stated that he blocked her attendance at the AGM and that he hampered her ability to function in her position. She further alleged that she was perceived as a threat to the male-dominated group and that she had been retaliated against because she was no longer perceived as loyal. She accused Mr. Skinner of ensuring that "all seats are filled by men" and characterized him as a misogynist.

[39] Her complaint referred to her long-running issue with Mr. Skinner about the choice of hotel at which to hold the Institute's training school and attendee selection. In his response to the complaint (Exhibit 2, tab 115), Mr. Skinner alleged that in his opinion, Ms. Denton proposed a particular hotel because she loved to gamble, and it had a casino.

[40] The complaint further stated that Mr. Skinner tried to have members of the BC/Yukon Regional Executive sign confidentiality agreements concerning all their discussions and that on a few occasions, he had accused her of having leaked such information. She also accused him of cancelling the Executive of the Year award on the pretext that there were no quality nominations and of stating later that the nominations were "bogus".

[41] In an email exchange between Ms. Denton and legal counsel from PIPSC on August 8, 2013 (Exhibit 30), Ms. Denton set out her concerns about Mr. Skinner. She stated that he played favourites and that she fell from grace when he saw her having lunch with, among others, Ms. Mertler and Ms. Friesen. Two weeks later, she was seen

in the company of Ms. Daviau, and she said that Mr. Skinner "went ballistic". She said that since them, he had been rude to her and had ignored her.

[42] Ms. Denton further accused Mr. Skinner of cancelling the "Steward of the Year" award because she was a nominee and accused him of referring to the nominations as "bogus". In a response to her complaint that he addressed to Ms. Price (Exhibit 2, tab 115), Mr. Skinner alleged that the decision was made by the BC/Yukon Regional Executive (without the knowledge that she had been nominated) and that Ms. Denton agreed with it. He also said that apathy in the region resulted in the nomination of only two stewards, which, in his opinion, was an insufficient basis on which to give the award.

[43] Mr. Skinner was provided with a copy of the complaint and an offer of informal resolution, and he was asked to submit a response (Exhibit 2, tab 42). Once again, in September 2013, he filed a response and made a counter-complaint (Exhibit 2, tab 43) in which he simply denied the allegations, without adding more detail. His four-sentence response also included a notification of a counter-complaint being made, without any further detail. As with the two previous complaints, he was advised that there would be an investigation by Ms. Price. In November 2013, Mr. Skinner provided a more fulsome response to the complaint, which he addressed to Ms. Price (Exhibit 2, tab 115).

[44] On November 13, 2013, Ms. Denton made an additional harassment allegation (Exhibit 2, tab 48). She alleged that Mr. Skinner retaliated and violated the Institute's policy when, at a meeting of the BC/Yukon Regional Executive on October 17, 2013, he announced that a member of the Executive had made a complaint against him and that he would not allow that individual into the hospitality suite at an upcoming meeting. It is to be noted that at that point, and due to a lack of space at the hotel, Mr. Skinner's room was to be used as the hospitality suite. Normally, the Institute rents a separate room for it. After a coffee break, Mr. Skinner announced that he was cancelling the hospitality suite as his room was too small. Ms. Denton also alleged that even though she had been named as the representative on the Human Rights Committee earlier that day, a new vote was taken later that day, and someone else was appointed in her stead.

[45] On November 21, 2013, Mr. Skinner made a counter-complaint (Exhibit 2, tab 43), which included a response to Ms. Denton's complaint. He characterized "all the

complaints" as politically motivated because he was popular and "unbeatable" in elections, meaning that his opponents were unable to take his position or fill it with someone of their choosing. He accused them of being "wannabes" who had done "virtually nothing as stewards", and stated that they just wanted to "travel, drink, and eat on the union's dime."

[46] Mr. Skinner was interviewed by Ms. Price about this complaint in November 2013. His two representatives attended via conference call. In March 2014, he was provided with a copy of the preliminary investigation report (Exhibit 2, tabs 50 and 51) and was advised that he had a deadline of 14 days in which to respond, which he met (Exhibit 2, tab 52).

[47] The final report was issued in early April 2014 (Exhibit 2, tab 53). Although Ms. Denton's initial complaint was dismissed, the investigator found Mr. Skinner guilty of harassment on the retaliation issue. The investigator found that while Mr. Skinner had held an honest belief that more conflict might have arisen had Ms. Denton been permitted in the hospitality suite and that he had been advised by his former representative to avoid contact with her, he was also aware that no measures to separate the parties had been imposed and that they were expected to conduct business as usual, in a respectful tone. Mr. Skinner had not sought advice from PIPSC's legal counsel concerning Ms. Denton's exclusion from the hospitality suite and had instead conducted himself contrary to instructions and in a disrespectful manner. Given that Mr. Skinner was an experienced union leader, the investigator held that Mr. Skinner was aware of how this message would be perceived and that he sent a message that there would be consequences for making a complaint.

D. The EC's actions in the Mertler and Denton complaints

[48] The EC met in April 2014 (Exhibit 2, tabs 54 and 55) to consider the reports on the Mertler and Denton complaints. As it had not yet received the final report on the Friesen complaint, this third complaint was not considered at that meeting. The corrective measures imposed on Mr. Skinner and communicated to him on April 28, 2014 (Exhibit 2, tab 56), were twofold: he was to issue an unqualified written apology to each complainant, and he was to undertake sensitivity training. He was advised that until he had completed the training, he would not be permitted to attend or participate in any Institute activity with certain exceptions, namely, meetings of the BOD, the BC/Yukon Regional Executive, and the BC Regional Council. The Institute had

carefully crafted the restrictions to allow him to carry on his director duties. As a result of the restrictions on his activities, his hospitality allowance was temporarily suspended. The Institute indicated that it would provide him with options of sensitivity training courses but that it welcomed his suggestions. On October 23, 2014, the Institute's general counsel, Isabelle Roy, wrote to Mr. Skinner (Exhibit 1, tab 9). She reminded him of the restrictions and stated that a failure to comply could result in further disciplinary action.

[49] When it decided the corrective measures that it implemented, the Institute noted that it had considered a number of factors.

[50] First was Mr. Skinner's use of his position of authority to engage in public retaliation against Ms. Denton.

[51] Second, it noted that on two occasions in 2012, and as indicated earlier in this decision, he had been advised in writing as to the tone and approach he employed in communicating with other members. With respect to this, in a letter dated October 24, 2012 (Exhibit 26), Mr. Corbett, then the president of PIPSC, had advised Mr. Skinner that the EC did not feel that the complaint that another member (Dan Jones) had made against him met the requirements of harassment, even if the tone of Mr. Skinner's email was viewed as "strong".

[52] Third, the harassment of Ms. Denton and the inappropriate conduct noted in the investigation report of the Mertler complaint ("the Mertler report") were considered indicative of a pattern of behaviour.

[53] Fourth, the EC considered that by engaging in public retaliation, Mr. Skinner had contravened the confidentiality of the complaint process.

[54] The last two factors considered were the expectation that PIPSC's leaders were expected to set standards for others and the fact that Mr. Skinner had demonstrated no remorse and that he lacked sensitivity to the impact of his approach on others.

E. The EC's action in the Friesen complaint

[55] By letter dated June 12, 2014 (Exhibit 2, tab 62), the final report on the Friesen complaint and counter-complaint was provided to Mr. Skinner. No additional corrective measures were imposed.

F. Appeal to the BOD

[56] Mr. Skinner appealed the imposition of the corrective measures to the BOD (Exhibit 2, tab 66), as was his right under PIPSC's applicable *Dispute Resolution and Discipline Policy* of December 3, 2009. He also appealed the EC's decision not to impose corrective measures on Ms. Friesen in response to his counter-complaint (Exhibit 2, tab 67). The appeals raised issues of bad faith, conflict of interest, bias, and procedural fairness.

[57] On June 3, 2014, Ms. Roy wrote a briefing memo to the BOD (Exhibit 2, tab 69), outlining the factual background to the Mertler and Denton complaints and concluding that pursuant to PIPSC's 2009 *Dispute Resolution and Discipline Policy*, the BOD's "… jurisdiction is limited to determining if the Executive Committee acted within its mandate". She also stated that according to that policy, "The Executive Committee's mandate is to make decisions that are not arbitrary, discriminatory or in bad faith." This conclusion was reported in the minutes of the BOD meeting on June 20 and 21, 2014 (Exhibit 2, tabs 70 and 71). These minutes also reflect the BOD's decision, in accordance with the Institute's rules, to engage the services of a neutral third party to hear the appeal of the two complaints in its place.

[58] Over a month later, on August 15 and 16, 2014, the BOD made the same decision with respect to the Friesen complaint. The mandate letters signed between the Institute and the selected third party stated that she would be limited to determining whether the EC and the BOD acted within their mandates under Part C of the 2009 *Dispute Resolution and Discipline Policy* (Exhibit 2, tabs 79 and 80).

[59] On June 16, 2014, Mr. Skinner's representative, Ian Tait, wrote to Ms. Roy (Exhibit 20) about the upcoming BOD deliberations, requesting that they be allowed to provide an opinion summary in person, given that she would be doing so. Mr. Tait also asked that Ms. Roy recuse herself from any involvement in the appeal, alleging that Ms. Bittman had already spoken to her and had provided her with "inaccurate and unsupported information". The letter further stated that Ms. Bittman, along with Yvan Brodeur, a PIPSC vice-president, and Ms. Daviau, should be removed from the hearing, since "hearing and voting on a disciplinary measure of their own making is contrary to administrative/natural justice and procedural fairness" as well as an abuse of power and a conflict of interest. Lastly, the communication requested that Steve Hindle, a PIPSC vice-president and member of the EC as of April 30, 2014, also recuse himself,

given events surrounding his attendance at a recent BC/Yukon Regional Executive meeting.

[60] On June 25, 2014, Mr. Tait emailed Ms. Roy and began by stating, "After discussion, we are okay with Joy Noonan" (Exhibit 2, tab 74), as the neutral third party mandated to decide the complainant's appeal of the internal complaints. He then requested that Ms. Noonan be made aware "at the outset" of the exceptionality of the disciplinary measure imposed on Mr. Skinner and that specific types of documents be submitted to her, namely, the final investigation reports with his rebuttals, the complete appeal file, and "all correspondence from EC and from us to the BOD."

[61] Further to the BOD's decision to retain the services of a neutral third party and to Mr. Skinner's indicated acceptance of Ms. Noonan, the Institute retained her services to act in place of the BOD. On July 7, 2014, Ms. Roy emailed Mr. Skinner and his representatives to advise them that Ms. Noonan had been retained and attached the draft mandate letter (Exhibit 2, tab 78). She stated, "I am open to your comments, but please keep in mind that the third party is being retained to act in substitution of the Board and the process provided for under the policy remains otherwise intact."

[62] On July 10, 2014 (Exhibit 2, tab 76), Mr. Tait and Mr. Lazzara wrote to Ms. Noonan to advise her of a number of their concerns. The last issue addressed was the sensitivity training course and how it was "not the normal course of action." They referred to the course as "psychological counselling", alleged that it "was likely recommended with input and influence by Shirley Friesen a VP (and psychologist)", and stated finally that Ms. Friesen and Ms. Bittman were working together and that Ms. Bittman "had a direct hand in administering the disciplinary measure."

[63] On July 18, 2014, Ms. Noonan dismissed the appeals against the Mertler and Denton complaints (Exhibit 2, tab 83). At paragraph 5 of her decision, she stated that her mandate was very narrow and that it was limited to determining whether the EC had acted within its mandate and had made a decision that was not arbitrary, discriminatory, or in bad faith. At paragraph 7, she stated that her mandate did not permit her to assess whether the EC had made a mistake or had acted beyond its authority. She then repeated that her assessment was limited to whether the actions had been arbitrary, discriminatory, or in bad faith.

[64] Ms. Noonan found that the EC's decision was not arbitrary, as it had been made after a full deliberation. While sensitivity training was new as a disciplinary measure, Ms. Noonan held that "accepted approaches to workplace incivility and disrespectful workplace behaviours" had evolved considerably. Finally, she found "no markers of bad faith." She concluded that there was no arbitrariness or bad faith in the decision to impose corrective measures or in the measures themselves. Ms. Noonan found that the need for sensitivity training was rationally connected to Mr. Skinner's behaviour and that the EC was entitled to accept the finding that he ought to have known that he had breached the confidentiality of the investigation process. Finally, Ms. Noonan found that the investigation was procedurally fair and that the EC's decision to consider the three complaints together was logical.

[65] Mr. Skinner's appeal against the Friesen complaint was dismissed by Ms. Noonan in September 2014. The present complaint was made the same month.

[66] On Mr. Skinner's appeal of the investigator's finding on the Friesen complaint, Ms. Noonan concluded that the EC's decision not to discipline Ms. Friesen was logical and in good faith given the finding that no harassment had occurred. Although the investigator had noted inappropriate conduct on Ms. Friesen's part, there was no evidence that it was part of a pattern of behaviour. Lastly, Ms. Noonan noted that the EC was entitled to accept and act on independent findings and to fashion appropriate remedies in good faith.

G. Mr. Skinner's complaint against Ms. Bittman

[67] At about the same time that Ms. Noonan was conducting her work on Mr. Skinner's appeals, he made a harassment complaint against Ms. Bittman, on August 19, 2014. He alleged harassment in relation to a comment that Ms. Bittman had made to Del Dickson, a BOD member, during a meeting of the BOD and alleged a conflict of interest and a breach of confidentiality in relation to another complaint. A neutral third party was retained by PIPSC. That person concluded that the complaint should be summarily dismissed, since the one-time comment at the root of the complaint had been directed not at Mr. Skinner but at another individual and therefore had not been intended to belittle or humiliate him. Furthermore, Ms. Bittman's apology to the BOD on the matter was sufficient. On the issues of conflict of interest and breach of confidentiality, the neutral third party found that it was inappropriate to use

a harassment complaint to attack the integrity of a separate harassment complaint process that was being run independently (Exhibit 10).

H. Mr. Skinner's response to the EC's decision, and the EC's response

[68] Following the appeal decision on the Friesen, Mertler, and Denton complaints by Ms. Noonan, PIPSC wrote to Mr. Skinner on August 5, 2014. It confirmed her decision, reiterated that written unqualified apologies and sensitivity training were required of him (Exhibit 2, tab 85), and stated that unless he complied, the restrictions imposed on his activities within PIPSC would remain in place.

[69] Mr. Skinner's representative, Mr. Tait, responded on August 11, 2014 (Exhibit 2, tab 86). He attached draft apologies that upon review by the Institute were deemed unacceptable. Both apologies began with Mr. Skinner advising the intended recipient that he was "being required to tender an apology" to them. The apology to Ms. Denton in particular stated that he contested the imposition of training as being "way beyond what anyone else at PIPSC has been required to attend." It also set out the conditions that he was willing to accept for the training. He accused the three women of collusion and concluded by stating that Ms. Friesen had behaved "far worse" than he had and that she too required training.

[70] The EC met on August 14, 2014, and discussed the situation. It confirmed that the apologies as proposed would not suffice as they were qualified and did not comply with the directions in the letter of discipline of April 28, 2014. As for the sensitivity training, the minutes of the meeting indicate that contrary to Mr. Skinner's allegations, no psychological report was required. The EC also reiterated its invitation to him to propose a course he felt was appropriate.

[71] On August 20, 2014, Ms. Roy wrote to Mr. Skinner (Exhibit 2, tab 88) to confirm the EC's decision and to state that it was false to suggest that any psychological report was required. She said that the Institute did require an outline of training objectives and how they had been met but that it did not require any medical information.

[72] Mr. Tait wrote to Ms. Roy in late August 2014, proposing a training course, which she accepted in early September 2014 (Exhibit 2, tab 89). The training was to take place in late October. However, when Ms. Roy followed up with Mr. Tait about the confirmation of the registration and the outstanding letters of apology, Mr. Tait replied

on September 23, 2014 (Exhibit 2, tab 92), advising her that Mr. Skinner had "exercised his right to appeal the EC decision to the PSLRB." The letter set out a long list of grievances about a number of items. It accused Mr. Hindle of retaliation, alleged that Mr. Skinner being barred from attending the Steward Council was evidence of retaliation for having filed an internal complaint against Mr. Hindle, argued that he had been treated differentially and unfairly, and pointed out what he considered the poor behaviour of Mr. Hindle, Ms. Bittman, Ms. Denton, and Ms. Friesen. The letter also complained of the Institute's decision to have Mr. Hindle attend, as an observer, all meetings that Mr. Skinner attended, alleging that it was "intimidation and harassment of the worst kind." Ms. Roy responded on October 10, 2014 (Exhibit 2, tab 93), advising Mr. Tait that the EC's decision remained in effect regardless of Mr. Skinner's complaint to the Board.

IV. The complaint

[73] I will turn now to a summary of the many allegations in the complaint. It is a dense mix of fact, allegations, and argument such that it is difficult to discern the exact actions at its source. Nonetheless, I have summarized the major issues, to situate the reader before outlining the Institute's response to the complaint and the oral testimony that was entered in this case. I will deal with each allegation in greater detail in the analysis section of this decision.

[74] Primarily, the complainant alleges that complaints made against him by Ms. Mertler, Ms. Denton, and Ms. Friesen (all of whom were friends), were referred for investigation despite, in his view, being groundless and frivolous. He also complains that private information was disclosed to the BOD only one week after the complaint was made, in June 2013.

[75] The complainant alleged that his preliminary objections alleging bias and conflict of interest were ignored, resulting in discipline that would not normally have been imposed. He also alleged that the investigator was biased against men and made comments on his behaviour that only a qualified medical practitioner could make. The complaint alleges that the neutral third party retained by PIPSC to decide the appeal was also in a conflict of interest, that the complainant's choices of neutral third parties were rejected, that he was refused a representative and not permitted to make verbal representations, and that the terms of reference for the neutral third party were too limited.

[76] The complaint alleges that the investigative process was tainted by unfairness, bias, and a denial of natural justice. The complainant alleged that the investigator ignored statements from key witnesses but placed weight on testimony from his adversaries. He also alleged that the investigator interviewed directors who were unfavourable to him, despite him advising the investigator that they should not be interviewed as that would place them in conflict of interest. He also alleged that witness statements and interview notes were withheld from him and that the record of those statements is inaccurate or has been fabricated.

[77] The complaint also alleges that the investigator exceeded her mandate, despite concluding that no harassment had taken place, by going further and deciding that the complainant had retaliated against those who had made complaints against him. He further alleged that he had never been accused of retaliation or given the opportunity to defend himself against such allegations, which then became the basis for discipline. He alleged that the purpose of this was to make it difficult for him to be re-elected to his position.

[78] The complainant alleged that the members of the BOD and EC were biased and in conflict of interest and that they recognized it only when it was time to hear his appeal, despite his earlier related protests. He also alleged that the EC was without a quorum to render a decision against him and that the final investigation reports and issues of discipline should have been sent to the BOD. He complained that the EC's members sat in on the BOD's discussion of his appeal, which was a clear conflict of interest. He also claimed that to justify the discipline meted out to him, the EC claimed that he had a history of bad behaviour and raised two incidents that had never been investigated and against which he had no chance to defend himself.

[79] The complaint further alleges that the EC harassed the BC/Yukon region by ignoring its requests for committee selections, interfering with the selection of the Finance Committee member from the region, and appointing the complainants to committees despite the fact that the region had not recommended them.

[80] The complainant alleged that he was refused legal representation by PIPSC, which used its in-house legal counsel against him.

[81] The complaint alleges that a PIPSC vice-president, Mr. Brodeur, disciplined him based solely on original English-only reports, when he usually requires that all documentation be translated for him.

[82] The complaint then alleges that Ms. Bittman engaged in mocking behaviour of the complainant at the August 2014 BOD meeting when aloud, she advised Mr. Dickson to "wake the f*** up", which is a phrase the complainant had been disciplined for saying quietly and discreetly to Ms. Mertler.

[83] The complainant also raised the issue of having been disciplined while he was in the process of appealing, which significantly impaired his ability to represent the members who had elected him. His hospitality account was frozen, he was permitted to attend approved meetings only if an observer was present, and he was required to take a sensitivity-training course that was in fact psychological counselling. He alleged that the last requirement was an invasion of privacy, was unprecedented, and was unreasonable in its harshness and was therefore arbitrary, discriminatory, and an abuse of authority.

[84] As for the required presence of an observer at regional council and executive meetings, the complainant alleged that this was unprecedented and humiliating, that it prevented him from carrying out several of his duties, and that it negated the good work he had done. The complainant detailed several meetings that he was not permitted to attend in May and September of 2014 and the embarrassment that resulted. With respect to him not being able to attend the Steward Council in particular, he alleged that the discipline was such that no reasonable person should have been expected to comply with it and that his refusal to comply was used to justify further discipline against him. The complainant stated that this effectively constituted dismissal from his position, without process.

[85] As remedial measures, the complainant seeks that a declaration of harassment and abuse of authority be made and that sanctions be imposed on unspecified individuals, including financial penalties, damages, apologies, and removal from office. He also seeks the dismissal of complaints against him and the expunging of discipline imposed on him and that the 2014 BC/Yukon election for regional director be suspended until these matters are resolved. Finally, he requested any other remedy that the Board deems fit.

[86] Despite that claim for remedial measures, the complaint continues with allegations. The complainant then alleged that the attendance of Mr. Hindle at two regional meetings in June 2014 for the purpose of "babysitting" him was belittling and humiliating and that he had made a separate internal complaint about it. He alleged that Mr. Hindle retaliated by hand-delivering a complaint against him, written on the letterhead of PIPSC's office of the president, at a meeting of the BC/Yukon Regional Executive in September 2014. Mr. Hindle's complaint was jointly signed by Mr. Hindle and Don Burns, a member of the EC, whom the complainant alleged was in a conflict of interest with him, as the complainant had supported Mr. Burns' political rival, and Mr. Burns had encouraged Ms. Mertler to make her complaint against him. To be clear, the Board is not seized of the internal complaints referred to in this paragraph; however, the facts surrounding these complaints formed part of the factual background raised by Mr. Skinner on the issue of the political nature of the present case.

[87] The complainant contested the fact that minutes of both the EC's and BOD's closed-session meetings discussing his case have been withheld from him. He also complained that a special meeting to remove him was not held, as he alleged was required by law, and that by being disciplined, he was effectively removed from office without PIPSC having followed the process. In so doing, his visibility was reduced, which made his re-election difficult.

[88] The complainant also complained about the timing of the discipline, alleging that it interfered with his ability to attend the Canadian Labour Congress (CLC) and May BOD meetings and that it left him insufficient time to respond to two complaints. He alleged that this was arbitrary, discriminatory, an abuse of authority, and done in bad faith, to deny him participation in the Institute.

[89] On the issue of the breach of confidentiality with respect to the Friesen complaint, the complaint alleges that by letter dated June 24, 2013, Ms. Bittman informed the BOD that that complaint had been made. It also alleges that PIPSC then informed the Okanagan and Yukon branch presidents, both of whom had asked Mr. Skinner to address their AGMs, that he was being disciplined as a result of founded complaints, when no such finding had been made. Furthermore, when his appeal was to be heard, copies of the final report and his appeal were posted unmarked on PIPSC's electronic "Virtual Binder" for any director to copy. While the complainant received an

apology two months later, he alleged that the damage had already been done, leaving him to explain the embarrassing presence of an observer at BC/Yukon Regional Executive meetings.

[90] On the issue of retaliation, Mr. Skinner defended keeping one complainant from attending the BC/Yukon Regional Executive hospitality suite at the Steward Council meeting by stating that his training had taught him to separate parties in conflict. He defended sharing the complaint with members of the BC/Yukon Regional Executive, as was his right, to obtain witness statements. He also stated that his representative and members of the BC/Yukon Regional Executive had advised him to take that action.

A. PIPSC's response to the complaint

[91] The Institute's response to the complaint was filed on October 23, 2014. It sets out the Institute's version of the facts as well as its substantive response to the complaint. The response begins by setting out the facts surrounding the three complaints made against the complainant by the three members of the Institute, which I summarized earlier. The Institute denied each allegation made by Mr. Skinner.

[92] The Institute defended the investigation process as appropriate and procedurally fair. It characterized Ms. Price as a neutral and unbiased investigator who conducted a thorough investigation. The Institute pointed out that it was not required to consult parties on the choice of investigator and that it was not in the habit of doing so. It alleged that Mr. Skinner's allegations that Ms. Price was biased against men and that she had reached a predetermined conclusion were without foundation and inconsistent with the facts. The Institute argued that Mr. Skinner had had the opportunity to respond to the findings in the preliminary investigation report and that an investigator is under no obligation to prepare formal witness statements. With respect to Mr. Skinner's allegation that the investigator had exceeded her mandate by considering the retaliation complaint, the Institute noted that he had been provided with timely notice and the opportunity to respond on two occasions and pointed to the definition of "harassment" in its *Harassment Policy* as including the offence of retaliation.

[93] The Institute then dealt with the EC's actions, arguing that it had acted appropriately when it addressed the complaints. The Institute denied the presence of bad faith or an improper motive and denied that the EC's members had encouraged

making the three complaints. It maintained that the EC acted in good faith, fairly and within its mandate, by retaining the investigator and imposing reasonable corrective measures.

[94] The Institute submitted that its *Conflict of Interest Policy* had been respected, as both Mr. Corbett and Ms. Friesen had excused themselves from participating in any discussion or decision in relation to the three complaints. In about March 2014, Mr. Burns also recused himself following a dispute with Mr. Skinner, by which time Mr. Corbett was no longer president of the Institute or a member of the EC. The Institute alleged that the remaining EC members had no disqualifying interest. The fact that Mr. Skinner endorsed a resolution to reduce the number of PIPSC vice-presidents from four to one, and the political tensions present on the EC, did not constitute a disqualifying interest. The Institute maintained that all deliberations were conducted with an open mind and that only relevant and appropriate considerations were considered.

[95] The Institute then argued that a quorum had been maintained at all times, given the fact that the EC's composition had changed three times during the period in question. All decisions had been made by three of five EC members, thus constituting a quorum at all times.

[96] The Institute stated that when it decided the appropriate corrective measures, it was reasonable for it to consider the fact that on two occasions, Mr. Skinner had been asked to be mindful of his tone and approach in internal communications.

[97] In defence of its novel decision to impose sensitivity training, the Institute responded that accepted approaches to workplace incivility had evolved in recent years and that this was the first time that it had been faced with a member who had engaged, without remorse, in multiple acts of inappropriate communication.

[98] In response to Mr. Skinner's allegations with respect to sensitivity training, the Institute noted that he was advised that a psychological report would not be required, that not all options were offered by psychologists, and that he was encouraged to propose his own options.

[99] The Institute denied the allegation that Mr. Skinner had been dismissed from his regional director position, arguing that he could perform his core duties despite the

imposition of the corrective measures, since those measures allowed him to attend important meetings related to his position. The suspension of his right to attend other activities, together with the suspension of his hospitality account, was time-limited and would end on the completion of his training. These measures and the requirement for the presence of an observer were reasonably and logically related to the findings and to Mr. Skinner's refusal to alter his conduct. The fact that the corrective measures were not placed in abeyance pending his appeal was appropriate and consistent with past practice and arbitral jurisprudence.

[100] The Institute argued that it applied the same 2009 *Dispute Resolution and Discipline Policy* policy throughout the investigation and that it did not retroactively apply the terms of the new version of the policy that became effective on February 1, 2014.

[101] With respect to the Institute's alleged failure to provide Mr. Skinner with legal counsel, the Institute stated that he had been treated like any other member would have been treated.

[102] Concerning the BOD's actions, the Institute denied that it had failed to give due attention to Mr. Skinner's allegations that the EC was in a conflict of interest and that the BOD had considered and rejected this objection. The decision to retain a neutral third party for the appeals was not an admission of any conflict of interest and was designed only to avoid any perception of one.

[103] With respect to Mr. Skinner's allegations concerning the failure to translate documents for Mr. Brodeur, the Institute's response states that the BOD never ruled on the appeal in any event, that Mr. Brodeur had a good level of reading comprehension in English and had never asked that the documentation be translated, that BOD discussions were interpreted simultaneously, and that the Institute's practice was to translate only briefing notes provided by its general counsel to the BOD and not all documentation.

[104] The Institute then dealt with the allegations concerning Ms. Noonan's role in the events. It indicated that by emails dated June 24 and 25, 2014, Mr. Skinner had consented to her appointment with respect to the appeals related to the Mertler and Denton complaints and that he objected only once his first appeal had been dismissed. It argued that the neutral third party's role was appropriately limited to that of the

BOD and stated that had the BOD heard the appeal, it would not have received verbal representations from Mr. Skinner, and his representative would not have sat in on the discussion. Therefore, he was incorrect in suggesting that he should have been afforded additional rights once his appeal was in the hands of a neutral third party. On the issue of scope, the Institute's *Dispute Resolution and Discipline Policy* provides that on appeal, the BOD's role is limited to determining whether the EC acted within its mandate, and that its mandate is to make decisions that are not arbitrary, discriminatory, or in bad faith.

[105] Lastly, on the issue of the breach of confidentiality, the Institute's response states that it is not a breach for the EC to advise the BOD that a complaint has been made or to provide electronic access to final reports or appeals. It also stated that advising a branch of the Institute that Mr. Skinner could not attend its meeting as a guest speaker as a result of the corrective measures imposed on him was not a breach of confidentiality. It closed by stating that even if one or more unintended breaches of confidentiality occurred, they did not amount to discipline or a penalty under the *PSLRA*, as it then was named.

V. Summary of the evidence

A. For the complainant

1. Mr. Skinner: examination in chief

[106] Mr. Skinner was a tax auditor with the CRA for almost 35 years and holds CPA and CGA professional designations. He got involved in the Institute in 1996 and became active in it in 2000. He was the president of the Vancouver, British Columbia, CRA branch for 12 years and PIPSC's AFS regional representative for BC/Yukon for 8 years, supervising over 100 stewards. He was named Steward of the Year in 2003 and Executive of the Year in 2010. He was elected as a PIPSC director in June 2012 and occupied that position until he lost an election in December 2014.

[107] Mr. Skinner referred to Ms. Noonan's appeal decision on the Mertler and Denton investigation reports issued on July 18, 2014 (Exhibit 2, tab 83, page 2, paragraph 5), in which she outlined that her appeal mandate was narrow. He alleged that her conclusion was based on findings of facts from investigation reports. She could not consider other information or interview him. He provided her with additional information. She said that she could not review it.

[108] During the investigation, Mr. Skinner obtained witness statements that he submitted to Ms. Price during his first interview on November 14, 2014. She took them and said that she would obtain some of her own.

a. The Friesen incident

[109] Mr. Skinner testified that he got along with Ms. Friesen; she was elected to the BOD in June 2013, one year after he had been elected. She was disgusted with the behaviour of the BOD, as everyone screamed. A discussion took place about a resolution to reduce the number of vice-presidents. PIPSC and Mr. Corbett had hired an expert in governance and not-for-profit organizations, who attended the BOD meeting and made a presentation. Mr. Skinner asked if he thought that PIPSC needed four vice-presidents. He alleged that Ms. Friesen went crazy at his response and that she attacked him as never before. He was shaking. Mr. Corbett immediately called a break. Only Mr. Skinner and Ms. Friesen remained in the room. He told her that she had always complained about BOD behaviour but that she had just attacked him and that she was a "hypocrite". Ms. Friesen replied that at least she did not travel the country and run campaigns of hate. Mr. Skinner testified that he was shocked and that he told her that she was "full of s***". He alleged that Ms. Friesen then continued "nattering". He stated that he put up his hand and said that he did not want to engage any further. He went to Mr. Corbett, who told Mr. Skinner that he had seen what had happened and that Ms. Friesen would probably make a complaint against him. Mr. Skinner said that he was in shock. He did not know how anyone could say that about him. According to him, Ms. Friesen was his boss — she was a vice-president and a member of the EC, and he was just a director.

[110] Mr. Skinner testified to having witnessed all kinds of behaviour by the BOD — banging on tables, swearing, etc., to the extent that the BOD had to attend a mediated session with an experienced mediator to learn how to work together. Ms. Friesen did not complain about any of the other members, just Mr. Skinner. He knew that she was a psychologist. On the issue of her state of mind, he referred to an email she wrote on October 18, 2013 (Exhibit 2, tab 29, page 22, Appendix B), in which she alleged that gender discrimination was a growing trend within PIPSC and that it and Mr. Skinner were engaged in "victim blaming". As for colourful language from a full-time vice-president, Mr. Skinner referred to an email dated June 20, 2014 (Exhibit 2, tab 102), in which Ms. Bittman acknowledged that along with everyone else, she was guilty of using

"colorful [*sic*] terms" on occasion. Mr. Skinner also referred to an email he wrote on August 19, 2014 (Exhibit 2, tab 122), in which he alleged that he had witnessed seeing Ms. Bittman tell Mr. Dickson to "wake the f*** up". Mr. Skinner said that he walked away from the confrontation. He knows that he has a loud voice, and he is usually quite calm at BOD meetings and rarely swears. He was shocked at Ms. Friesen's comment to Mr. Dickson.

b. The Mertler incident

[111] At the BC/Yukon Regional Council meeting in June 2013, a Friday-night dinner was held. Mr. Skinner testified that Ms. Mertler became highly inebriated. On Saturday morning, the meeting began at 8:30. Ms. Mertler had agreed to speak to certain resolutions. It was her last day on the BC/Yukon Regional Executive in June 2013. Mr. Skinner testified that she was at the head table, in essence passed out, with her head in her hands. Kal Sahota chaired the meeting and asked Mr. Skinner to do something about Ms. Mertler. He went over to her, crouched down, and told her, "Marie, wake the f*** up" ("the Mertler incident"). He was her boss, and she was embarrassing the executive. He never denied using that language.

[112] Three or four months later, Ms. Mertler told Mr. Skinner that she did not like the words he had used. He apologized and said he was sorry, but he had thought that she was not paying attention at the meeting. The next thing he knew, she had made a harassment complaint. He did not understand why he was disciplined, as he was her boss, and Ms. Mertler had already received an apology from PIPSC. He questioned whether members would condone behaviour by someone who had been so inebriated that she could not conduct business the next day. Mr. Skinner said that he had known Ms. Mertler for 10 years and that she constantly used four-letter words. One month earlier, she had emailed him after he had resolved a dispute and had written that he was a caring and compassionate person. He testified that he did not agree with PIPSC's statement in Ms. Daviau's letter to Ms. Mertler of May 29, 2014 (Exhibit 3), which advised her that the EC had taken measures to address the findings of inappropriate behaviour and extended apologies on behalf of the Institute. He testified that in his opinion, it condoned Ms. Mertler's behaviour.

c. The Denton incident

[113] While the investigator did not find that Mr. Skinner had harassed Ms. Denton, she found that he had retaliated against Ms. Denton by not allowing her in the hospitality suite, thus denying her a benefit to which others were entitled. And he had shown her complaint to witnesses and talked about it at the BC/Yukon Regional Executive, which embarrassed her. Although he did not mention her name, two people at the Regional Executive knew that he was referring to Ms. Denton.

[114] Mr. Skinner testified that the BC/Yukon Regional Executive, not he, had decided that there would not be a hospitality suite. He referred to the minutes of the Regional Executive meeting (Exhibit 1, tab 14, item 21) held the day before the Steward Council meeting.

[115] Mr. Skinner testified that his room was too small to entertain as there was only 1 bathroom, and 140 people had attended. The resort had said that nothing else was available. The room could accommodate only 5 or 6 people at a time. He acknowledged that he was concerned about having the complainants in the room, as drinking was underway, and tempers could well have flared. He feared that more complaints being made against him. The decision was made that there would be no hospitality suite. However, although it was not advertised, the BC/Yukon Regional Executive members could tell people that if they wanted to go to Mr. Skinner's room for a drink, it was fine.

[116] Mr. Skinner testified that had the complainants asked to attend, they could have attended. Although he personally did not want them there, he would have left the room had they indicated their desire to attend. Mr. Skinner referred to Ms. Price's investigation report about the Denton complaint (Exhibit 2, tab 53) and alleged that it caused confusion as there was no hospitality suite, only his room. He explained that in his BC/Yukon Regional Executive, decisions were made by consensus.

[117] Mr. Skinner then testified about the two complaints made against him in 2012, which dealt with allegations of improper behaviour and were referred to earlier in this decision. With respect to a letter to Mr. Skinner from Mr. Corbett dated May 29, 2012 (Exhibit 2, tab 57), the individual named in the letter, Sean Auguste, was a retired member of PIPSC who had been a member of the BC/Yukon Regional Executive and who had had the right to attend certain meetings. Mr. Skinner and Mr. Auguste had an

exchange that the latter did not like. He made a complaint against Mr. Skinner, which was never investigated. Mr. Skinner asked Mr. Corbett what the letter was about. He replied that it was about leadership and that Mr. Skinner should not worry, as it was a courtesy letter. Mr. Skinner wrote back, stating that he accepted it in the spirit in which it had been intended.

[118] With respect to the second complaint in 2012, which resulted in a letter to Mr. Skinner from Mr. Corbett dated October 24, 2012 (Exhibit 2, tab 58), Mr. Skinner testified that it concerned his long-standing difficult relationship with Mr. Jones, a former director of the BC/Yukon Regional Executive and former member of the Vancouver CRA Branch executive. Mr. Skinner said that he had won the director position over Mr. Jones, who resented it. Mr. Corbett talked to both of them and suggested that they have dinner, so they could talk and try to get along. Mr. Jones left the dinner, and Mr. Skinner was shocked. He testified that it was his belief that Mr. Jones had received the same letter.

[119] Mr. Skinner testified that PIPSC used the two letters ("the two 2012 letters") to establish a pattern of behaviour. As a result of them, PIPSC did not offer him any training, did not follow-up, and did not say that they were warning or cautionary letters. However, he testified that PIPSC considered them documented evidence of bad behaviour. Had he known that they would be used that way, he would have fought them.

[120] Mr. Skinner then referred to the minutes of the EC's July 3, 2013, meeting (Exhibit 2, tab 20, Appendix A), in which it is stated that several B.C. members were afraid to "go against" him as they "claim he is a bully and fear his reprimand." Mr. Skinner testified that no one had every called call him a bully. He questioned what "fear his reprimand" meant and alleged that the minutes show that the EC had already made up its mind about him. PIPSC never indicated to him in a document or elsewhere that people in B.C. feared his reprimand or that he was a bully. Next, Mr. Skinner referred to the sixth paragraph of those minutes, in which he is accused of a prior lack of cooperation and of refusing to attend mediation. Mediation is an option at PIPSC. He was willing to take sensitivity training in a class with pass or fail marking, but that was in July 2013, before the investigation, and his first interview with the investigator was on November 14, 2013. He alleged that when he was disciplined, the sensitivity training was to be carried out with a psychologist who would report to PIPSC. He said

that it was not sensitivity training and repeated his contention that PIPSC wanted behavioural therapy.

[121] Mr. Skinner then addressed the minutes of the June 18, 2013, EC meeting (Exhibit 2, tab 16, Appendix A), which state that "there have been numerous issues in the past with the respondent" and in which he is characterized as a repeat offender. He disputed both statements.

[122] Mr. Skinner was told that his proposed apologies were not acceptable and that they should be rewritten because they were qualified. He testified that he wrote that he was required to tender an apology. He asked Ms. Roy to help with drafting the letter. She refused, even though in the past, Ms. Bittman was helped with a letter of apology. He testified that had he been asked to remove that line, he would have, but nobody told him to. Concerning sensitivity training, Mr. Tait offered several alternatives. Finally, CRA sensitivity training was accepted. Mr. Skinner testified that he did not attend it because PIPSC required unqualified letters of apology.

[123] According to Mr. Skinner, Ms. Friesen has a history of bad behaviour that he pointed out to the investigator, who dismissed it. He alleged that Ms. Friesen had written emails about him but that the EC had not disciplined her.

[124] Ms. Price emailed Ms. Denton's additional allegations (Exhibit 2, tab 4) to Mr. Skinner immediately after the PIPSC's AGM. He did not know who had written them as they were unsigned and had not been written as a complaint. If it constituted an additional complaint, it should have gone to the PIPSC's general counsel for vetting and then to the EC.

[125] Ms. Denton was present at the meeting of the BC/Yukon Regional Executive at which it was decided to cancel the formal hospitality suite. Had she or the other complainants shown up, he would not have turned them away. He had arranged with Mr. Lazzara that if any of the complainants showed up, he would leave, and Mr. Lazzara would take over the room.

[126] When Ms. Price interviewed him on November 14, 2014, Mr. Skinner mentioned the minutes of the October 17, 2013, BC/Yukon Regional Executive meeting concerning the cancellation of the hospitality suite, which she had requested. He emailed them to her on November 21, 2013 (Exhibit 12). All his training as a PIPSC steward stated that

in a harassment complaint, the parties should be separated. However, in an email on October 15, 2013, Ms. Roy had advised Wanda Aschacher, a member of the Regional Executive (Exhibit 2, tab 53, page 50), that "the Institute expects all its members to conduct themselves professionally" and to respect the Institute's values of respect, integrity, cooperation, and accountability. Mr. Skinner said that because of Ms. Roy's response to Ms. Aschacher, he could not exclude Ms. Denton from his room.

[127] Mr. Skinner then addressed Ms. Denton's additional allegations (Exhibit 2, tab 48). Nao Fernando, Mr. Skinner's first representative, told Mr. Skinner to gather the witness statements he thought he would need for the Denton complaint. Mr. Skinner had obtained a statement from Mr. Sahota because Mr. Sahota had thought that the complaint had been directed at him, and it was his responsibility to handle seat selections at the AGM. Mr. Sahota provided a statement as to how he made the selections. Mr. Skinner testified that he gave the statement to Mr. Fernando, who then fell ill and could no longer represent him. Mr. Skinner then asked Mr. Tait to help, and Mr. Lazzara offered his services. Mr. Skinner gave the statement to them. He also obtained a witness statement from Ms. Aschacher and gave both statements to Ms. Price, who never returned them. Mr. Skinner testified that Ms. Price said that they were irrelevant and that she would obtain her own witness statements and decide whom to interview. Both Mr. Tait and Mr. Skinner told Ms. Price that they wanted full disclosure; she refused. Ms. Roy also wrote him a letter, stating that the investigator did not have to accept the statements. That is when Mr. Skinner thought something was wrong with the investigation. When he was on the BOD, he had seen investigation reports; they had included witness statements.

[128] Before Mr. Skinner became a director, he was a member of the AFS executive. He had been involved in investigations conducted by the CRA's internal affairs section in which the investigator had given witnesses their statements to sign immediately following their interviews. When one time, Mr. Skinner and Mr. Tait were assigned by PIPSC and the AFS to investigate an individual, Mr. Skinner had sought advice from Martin Ranger, PIPSC Legal Counsel, on how to conduct the investigation. In the investigation they conducted, they gave all the witnesses their statements, for their approvals. Mr. Skinner testified that he thought that that was normal procedure. He saw nothing in PIPSC policy or guidelines to the effect that he could not ask for witness statements to help defend himself. Nobody from PIPSC or the investigator said that he could not receive them until he met with the investigator. Ms. Aschacher wrote

to Ms. Roy, asking how to proceed. She sent another letter to Ms. Roy on October 24, 2013 (Exhibit 1, tab 12), indicating that Ms. Denton had claimed that she was being bullied by the executive and had slandered its members.

[129] Mr. Skinner testified that it was important that he inform the BC/Yukon Regional Executive that a complaint had been made against him because he feared saying or doing something that would result in another complaint. He also felt compelled because of the hospitality suite issue. He sought guidance from PIPSC via Ms. Aschacher and was shocked by Ms. Roy's response, because all his training in such matters had been to separate the parties.

[130] Mr. Skinner then testified with respect to a letter he addressed to Ms. Roy on February 25, 2014 (Exhibit 2, tab 100), and reiterated the issues he had outlined in it. He was concerned that the same investigator was to investigate and assess the three complaints together. He said that PIPSC by-laws stated that an investigation had to be procedurally fair. He took that to mean that he would obtain witness statements, face his accusers, and comment on what they had said. He said that from his first day on the BOD, he had proven that he was not a "yes man". Members of the BOD always sought his vote. Ms. Daviau, Ms. Bittman, and Ms. Friesen hated him because they could not get him to vote their way. He voted as he thought best for the members, and he had no ambition to run for vice-president or president.

[131] Mr. Skinner testified that in 2012, Carmine Paglia was the treasurer on the AFS executive who filed a report claiming financial irregularities in one of Mr. Lazzara's expense claiMs. The EC suspended Mr. Lazzara for three years but at that time, he could appeal to the BOD. Mr. Skinner knew that the report was wrong, and he represented Mr. Lazzara. The EC's members wanted to attend the BOD meeting and vote on the appeal of their decision, which Mr. Skinner succeeded in blocking. Mr. Burns was upset and threatened to sue him. Mr. Skinner testified that Ms. Bittman was in a conflict of interest because at the time of the events in issue, she was living with Peter Gilkinson, who was running against Mr. Lazzara for the AFS presidency. Were Mr. Lazzara's suspension upheld, Mr. Gilkinson would have had "the way clear" for the AFS presidency. The BOD overturned the EC's decision. Mr. Skinner stated that he had testified to all this to show that he was targeted because he had helped someone whom Ms. Bittman hated.

[132] Mr. Skinner wrote to Ms. Price on the issues of the apprehension of bias and conflict of interest. She said that they were not within her mandate. Ms. Noonan said the same thing. Mr. Skinner then referred to several events that he alleged supported his position that members of the BOD and EC were in a conflict of interest and that they hated him and advocated against him because of the positions he took. Concerning the proposed reduction of vice-presidents, Mr. Skinner said that the same position had been taken by the AFS under Mr. Lazzara and PIPSC's Atlantic region. Mr. Skinner was on PIPSC's Executive Compensation Committee, which reviewed the salaries and benefits of executive members. It found certain irregularities as well as omissions to do away with severance payments, which the federal government had eliminated.

[133] Mr. Skinner questioned why Ms. Price raised the issue of bad behaviour, as he had not been accused of it. Had he been, he could have defended himself differently, but he never had the opportunity. He alleged that Ms. Price went out of her way to interview people with whom he had issues, namely, Mr. Jones and Helene Spacek, a former vice-president of the Vancouver CRA branch. He told Ms. Price that he would not discuss the issue with Ms. Spacek because it was private.

[134] Mr. Skinner provided only one character witness, Jim Thatcher, who had sat on a number of his executives and had served under two directors. Mr. Skinner did not think that he needed more character witnesses. He added that Ms. Price did not interview Mr. Thatcher.

[135] Mr. Skinner then stated that "union business" is political and that people are raucous and argue. He gave examples of arguments he had had, including with Mr. Corbett, with whom he was not friendly, but said that they were able to talk things out, even loudly, and resolve them. He testified that he had heard every senior person at PIPSC use the "F-word". He stated that he did not know if Ms. Price had a union background or had attended union meetings. If she had, she would not have said what she did. It was either incompetence or bias.

[136] Mr. Skinner then referred to two documents in evidence. In the first document, (Exhibit 2, tab 39), Ms. Price's report on the Mertler complaint, Ms. Price stated that she was troubled with his inability to recognize problems with his conduct that he would not tolerate from his employer. The second document (Exhibit 2, tab 56) is a letter to

Mr. Skinner from Ms. Roy sent in April of 2014 in which she referred to that statement. Mr. Skinner said that in the workplace, an employer would discipline employees for such language. The investigator was using the employer as a benchmark, when stewards require an aggressive nature.

[137] Mr. Skinner testified that he did not attend sensitivity training because a lengthy exchange occurred with Ms. Roy about the type of training, and by the time it was resolved, it was September 2014. The 90-day limit to make a complaint with the Board was approaching, and he could not get his letters of apology accepted. No one told him what was wrong with the letters.

[138] Mr. Skinner next referred to an email sent to Ms. Price by Mr. Tait (Exhibit 2, tab 112) and reiterated the concerns raised by Mr. Tait to the effect that he had issues with Ms. Price accepting additional allegations from Ms. Friesen and Ms. Denton that had not been vetted by Ms. Roy and the EC. He testified that as the letter stated, he had made additional allegations, which Ms. Price had not accepted.

[139] Mr. Skinner alleged that the investigator "made up" the word "retaliation" without coming to a conclusion in the final report. He said that Ms. Denton did not use the word "retaliation".

[140] Ms. Daviau emailed the PIPSC stewards on October 24, 2014, concerning the complaints made by Messrs. Corbett and Skinner (Exhibit 16) with the Board. Mr. Skinner testified that he was shocked. In all his 18 years at PIPSC in several capacities, he had never seen an email to all members naming the persons who had made complaints against PIPSC. The date of the email was a few weeks before the mid-November regional director election, a position for which Mr. Skinner was a candidate. He alleged that this was done to limit his visibility to the membership and to ensure that he could not be re-elected. It ensured that every member knew that there was a founded complaint against him that was appealed. Few knew that he had made a complaint to the Board. Mr. Skinner alleged that he had received emails from all kinds of people across the country as a result, asking what he had done. It affected how people voted, and the discipline ensured that he could not speak with members.

[141] Ms. Price emailed Mr. Ranger on January 3, 2014, attaching Mr. Skinner's email of November 20, 2013 (Exhibit 17). Mr. Skinner said that if the investigator was independent, why did she go to "PIPSC legal" for instructions? This showed that PIPSC

was involved in her investigation, even though she was supposed to act independently. It also showed at a minimum that Ms. Bittman and Ms. Friesen were discussing his complaint. They, together with Ms. Daviau, were on the EC, which was dealing with his complaint. He alleged that Ms. Bittman did not declare a conflict of interest concerning his complaint. Mr. Ranger reported to Ms. Roy, who in turn reported to the president. Mr. Skinner asked Ms. Roy to declare a conflict of interest, but she did not.

[142] Mr. Skinner then explained the allegation at paragraph 13 of his complaint, namely, he was denied legal representation by PIPSC. He conceded that the provision of it is discretionary and not mandatory. For the allegation at paragraph 16 of his complaint, which was that PIPSC applied its discipline policy retroactively, he conceded that it was not the case. While the new 2014 *Dispute Resolution and Discipline Policy* was implemented, which dealt with the conflict issue he had raised, it was implemented after the complaints at issue had been made. PIPSC continued with the complaints under the former 2009 policy and did not apply the new policy retroactively.

[143] Mr. Skinner then turned his attention to the preliminary investigation report in the Friesen complaint (Exhibit 2, tab 25). He alleged that during his interaction with Ms. Friesen, only Mr. Corbett and Julie Gagnon were in the room. Mr. Dickson came forward eight months later to be interviewed. Mr. Skinner said that Mr. Dickson had not been in the room, and there was no evidence that he had been there. He then referred to his representatives' response to the preliminary report (Exhibit 2, tab 29, page 6), which questioned why people who had not witnessed the events were interviewed, yet Mr. Skinner's witness, who was interviewed, did not figure in the report. Also, Mr. Skinner's reply to the preliminary report refers to an email he received from Deborah Kruz, a member of Ms. Friesen's consultation team, advising him of her interview with Ms. Price, in which she characterized Ms. Friesen as a bully.

[144] Mr. Skinner then referred to the final report in the Friesen complaint (Exhibit 2, tab 30) and to the last paragraph on page 58, which concluded that his behaviour had been inappropriate and that he had spoken in a raised and aggressive tone that had the potential to fall within the definition of "harassment" but for the fact that it was a singular occurrence that was not sufficiently egregious to constitute harassment. Mr. Skinner alleged that that conclusion was false. He alleged that Ms. Friesen had been loud and aggressive and that the meeting had been paused because of her. He stated

that the investigator did not provide context and that she went beyond her mandate when she determined that there had been harassment.

[145] Mr. Skinner then referred to the minutes of the BOD meeting of September 15 and 18, 2013 (Exhibit 2, tab 47), and to Appendix B, section 4.5 in particular, in which the penultimate paragraph states that the EC considered Mr. Skinner's "past record". Mr. Skinner said that he had no past record. Mr. Corbett had characterized the two 2012 letters as "mentoring". Bullying was never discussed with Mr. Skinner.

[146] Mr. Skinner then turned to the preliminary investigation report in the Denton complaint ("the Denton preliminary report"; Exhibit 2, tab 50, page 56), which states, "Mr. Skinner has a history of conflict with both men and women." He asserted that that was false; Ms. Price did not provide him with documents supporting this allegation of conflict and never discussed that issue with him.

[147] As to the report's allegation that he was disrespectful, Mr. Skinner said that the BC/Yukon Regional Executive meeting occurred in a closed room. He did not mention Ms. Denton by name and said only that three complaints had been made against him. He denied that he had "excluded Denton in a public manner." As for the investigator's conclusion that Mr. Skinner sent a message to the membership that filing complaints had "consequences", Mr. Skinner said that as a regional director, what could he have done to her personally? He took orders from the EC.

[148] Mr. Skinner then referred to item 5.1.1 of the minutes of the EC meeting of April 22, 2014 (Exhibit 2, tab 55), which deals with the matters involving Mses. Denton and Mertler. The minutes refer to "warnings" sent to him in the past and to the two 2012 letters "asking that he change his tone when dealing with people." Mr. Skinner asserted that the letters referred to were not disciplinary. Had they been, he would have contested them. He stated that he never saw those minutes until the production order.

[149] Mr. Skinner testified that he did not know that he would be accused of a breach of information. According to PIPSC, it was done because he had obtained witness statements. He alleged that PIPSC breached his confidentiality by posting the investigation report on the Virtual Binder. It apologized two months later, when the damage had been done.

[150] Mr. Skinner then raised the issue of Ms. Noonan's impartiality. He said that she acted as PIPSC general counsel in Ms. Roy's absence and that she provided mediation and consulting services for the EC. He referred to an email exchange between his representatives and Ms. Roy of June 25, 2014 (Exhibit 2, tab 74), in which they consented to Ms. Noonan as a neutral third party, albeit with stipulations on the disclosure of certain documents to them, and demanded that she be apprised "from the outset" that the disciplinary measure imposed on him was "exceptional". Mr. Skinner said that Ms. Roy had testified that in the email correspondence of July 10 and 11, 2014, between her, Mr. Tait, and Ms. Noonan (Exhibit 2, tab 76), the use of the word "coached" in Ms. Noonan's email to Ms. Roy meant that Ms. Noonan had coached EC members on their interpersonal relationships, terming it "conflict coaching". Mr. Skinner said that Ms. Noonan had acted on behalf of PIPSC. He testified that Ms. Roy had stated that Ms. Noonan was not retained by Ms. Daviau as an individual coach.

[151] Mr. Skinner referred to an email from Ms. Daviau to Ms. Roy dated January 14, 2014 (Exhibit 18), in which the former "confidentially" expressed her concern that only BOD members favourable to Mr. Skinner were being interviewed and her "hope" that the result of the investigation not be "one-sided as well." Mr. Skinner stated that his concern from the outset was that the EC hated him. The email states that people negative to him were not being interviewed. The email had been sparked by an earlier email from a member who had wished to be interviewed but was told by Ms. Price that she would determine whether the member's evidence was needed. Mr. Skinner then questioned why Ms. Price did not gather the evidence before issuing the findings of her investigation.

[152] In an email to Mr. Skinner dated March 10, 2014 (Exhibit 2, tab 95), Ms. Roy wrote that with respect to his February 25, 2014, request for disclosure and natural justice obligations that he be allowed "to review any supporting evidence," she was of the view that the present process met the requirements. Mr. Skinner said that he never received the email.

[153] Mr. Fernando emailed Ms. Roy on August 1, 2013 (Exhibit 2, tab 97), expressing concern about the EC being in a conflict of interest.

[154] Mr. Skinner said that Ms. Roy's email to Randy Millage, PIPSC's chief negotiation officer, of May 8, 2014 (Exhibit 2, tab 126), shows that PIPSC breached his confidentiality. The email advised Mr. Millage that he ought to have been copied on the letter of discipline to Mr. Skinner as he might have to direct staff under his supervision to ensure that it was respected. He said that Mr. Millage was a PIPSC employee and the chief of bargaining and asked why Mr. Millage had to be informed. He speculated that Mr. Millage would not have been happy with Mr. Skinner's pension recommendations.

[155] Mr. Skinner next referred to an email exchange on June 16, 2014 (Exhibit 20), between Ms. Friesen, Ms. Bittman, and Ms. Daviau. He said that Ms. Friesen was in a declared conflict of interest but that she discussed his case with other EC members.

[156] Mr. Skinner then referred to Ms. Noonan's email to Mr. Corbett dated July 9, 2013 (Exhibit 1, tab 30). Mr. Skinner questioned why Ms. Noonan emailed Mr. Corbett about complaints that related to the EC and the BOD while she was retained as the neutral third party one year later.

[157] Mr. Skinner then devoted part of his testimony to refuting statements in PIPSC's response to his complaint. Concerning Ms. Price's statements about his behaviour, he admitted that he talks loudly. He argued that as a steward, one has to be passionate, aggressive, and fearless. He alleged that Ms. Price took things out of context and that salty language is normal in a union environment.

[158] Concerning the conclusion that Mr. Skinner had shown no remorse, he asked why he should have shown any when the harassment allegations were dismissed.

[159] At that point in the hearing, Mr. Skinner withdrew his allegations of the breaches of ss. 188(d) and (e) of the *FPSLRA*.

2. Mr. Skinner: Cross-examination

[160] Mr. Skinner was referred to a brief email he wrote to Ms. Roy on July 11, 2013 (Exhibit 2, tab 35), in which he stated that he would provide a list of witnesses who would offer written or verbal statements to her. When Mr. Welchner pointed out that the email did not state that he would gather the statements himself, Mr. Skinner replied that he did not receive a reply to his email and that he was not cautioned against gathering the statements himself. Nobody gave him guidelines about the investigation. He consulted policies. There was no prohibition against gathering

witness statements. Furthermore, Mr. Fernando advised him to gather them. If he was wrong to have done so, he did it unknowingly. When he was referred to an email from Ms. Price to Mr. Tait on October 30, 2013 (Exhibit 1, tab 13), Mr. Skinner agreed that it stated that he could not gather witness statements. He then said that Ms. Price had been retained two months earlier and that she could have told him as much at that time.

[161] In his response to the preliminary report on the Friesen complaint, Mr. Skinner did not mention that the phrase "full of s***" was common language in the union setting. He maintained that in the circumstances, he was respectful by using that phrase with Ms. Friesen and telling her that she was a hypocrite when she told him that he was running campaigns of hate. In his response, he also did not mention his testimony that to be a steward, one has to be aggressive or otherwise be eaten alive. Mr. Skinner said that he had to explain the union to Ms. Price because she had never before conducted an investigation for PIPSC.

[162] Mr. Skinner agreed that in his response to the Mertler complaint, he did not state that Ms. Mertler had used the word, "f***". He said that he told Ms. Price in the interview that the word was commonly used and that it was used by Ms. Mertler. While acknowledging that he could have been more sensitive, Mr. Skinner said that regardless, he had to get Ms. Mertler to wake up and did not know what else he could have done in the circumstances. He apologized if he had offended her. He alleged that Ms. Bittman had that said she would have done the same thing but that she would not have used that word.

[163] Mr. Skinner testified that he told Ms. Price not to interview directors, including Ms. Spacek, because of personal issues and that she interviewed only those unfavourable to him. Furthermore, he thought that it would put the directors in a conflict of interest when his appeal to the BOD was heard. When it was to be heard, all the directors declared that they were in conflict of interest. He would have provided more character witnesses had he known to. If Ms. Price was independent, why did she write to Mr. Ranger of PIPSC's legal section about whom to interview (Exhibit 17)? Mr. Skinner testified that the people he had asked to be interviewed were not interviewed. Ms. Price's approach was not balanced.

[164] Mr. Welchner then pointed out that when in a letter dated October 30, 2013 (Exhibit 2, tab 24), Ms. Roy informed Mr. Tait that Ms. Price had been selected as the investigator, Mr. Skinner did not take the position that she was unqualified.

[165] Mr. Skinner stood by his statement in the complaint that Ms. Price was "biased against men" (see paragraph 5 of the complaint). He said that her firm was 100% female. None of the representations he made was considered, while those made by females were considered. He alleged that Ms. Price did not pay attention to what he said and that she commented on his behaviour, yet she made no comments about Ms. Denton lying. Even though the complaints were dismissed, he was the one determined to have behavioural issues. Mr. Skinner stated that Ms. Price did not have a mandate to address behaviour. Why did she not comment on Ms. Denton's behaviour? Nobody talked about the fact that Ms. Denton's complaint was mostly against Mr. Sahota. Ms. Denton lied to him about delegate selection. Mr. Skinner stated that Ms. Friesen had libelled a former director and had been admonished by a past president.

[166] Mr. Skinner admitted that in hindsight, he should not have referred to Ms. Price as a "goofy feminist investigator" in his letter to the BOD of August 12, 2014 (Exhibit 2, tab 103).

[167] Concerning his request to Ms. Price that she interview Mr. Thatcher, while he agreed that Mr. Thatcher was not a witness to any of the allegations, he pointed out that neither was Ms. Spacek or Mr. Jones. Although he did not raise the fact that Mr. Thatcher had not been interviewed in his response to the preliminary report, Mr. Skinner had told Ms. Price to interview him, to obtain a balanced view. If Mr. Skinner had known that he would be accused of and disciplined for bad behaviour for the previous 10 years, he would have made more of an issue about her interviewing Mr. Thatcher.

[168] Mr. Skinner agreed that Mr. Thatcher's character evidence was irrelevant to a finding of retaliation but stated that Ms. Price went out of her way to comment entirely negatively on his behaviour, which the EC took into account. Mr. Skinner spoke to some people Ms. Price had interviewed who had said positive things about him — Ms. Aschacher and Mr. Corbett were cited as examples — but their comments were not in the report. Mr. Skinner knew that Ms. Aschacher, Mr. Corbett, Carol-Ann Lonsdale, a

member of the BC/Yukon Regional Executive, and Mr. Sahota had had long interviews but that only snippets were in the report. Jason Brown and Mohan Grewal were not interviewed despite the fact that he had provided their contact information to Ms. Price (Exhibit 2, tab 108). Mr. Brown could have made positive comments as he had replied to Ms. Spacek's nasty comments about the subgroup. Mr. Skinner did not mention Ms. Price's failure to interview Mr. Brown in his response to the preliminary Denton report because he had given her Mr. Brown's witness statement.

[169] Concerning Mr. Skinner's assertion that Ms. Price exceeded her mandate by commenting on his behaviour aside from the retaliation issue, he pointed to page 56 of the final investigation report of the Denton complaint ("the Denton final report"; Exhibit 2, tab 53), where Ms. Price stated that Mr. Skinner "… has a history of conflict with both men and women." Mr. Skinner asked where Ms. Price obtained that information and for evidence supporting it. He also referred to the letter of discipline of April 28, 2014. How could Ms. Price say that Mr. Skinner would continue to encounter conflict? He said that the report makes those comments throughout, although Ms. Price is not a psychologist.

[170] Mr. Skinner had wanted Mr. Grewal interviewed because Ms. Mertler's complaint referred to an incident to which Mr. Grewal could speak. He did not ask that Mr. Grewal be interviewed in his response to the preliminary investigation report in the Mertler complaint because Mr. Grewal was on the list of witnesses he had given to Ms. Price. She did not interview him; what else was he to do? When it was put to him that he did not raise the issue of Ms. Price having overlooked witnesses in any of his responses to the preliminary reports, Mr. Skinner said that while Ms. Price's preliminary reports dismissed most of the allegations, he had no idea that he would be disciplined aside from the harassment charges. It was not a big issue at first but became one later on.

[171] Concerning Ms. Denton's "additional allegations" and the retaliation issue, Mr. Skinner acknowledged that he was familiar with PIPSC's *Harassment Policy* (Exhibit 2, tab 6), which states that retaliation constitutes harassment. He asserted throughout a lengthy cross-examination on this issue that Ms. Price never told him directly that she was investigating retaliation. He was referred to an email exchange between him, Ms. Price, and Mr. Tait dated January 10, 2014 (Exhibit 2, tab 112), in which Ms. Price indicated that she was investigating retaliation allegations against Ms. Friesen and

Ms. Denton for having made complaints. Mr. Skinner stated that he wanted Ms. Price to investigate the additional allegations that he had filed against Ms. Friesen.

[172] Mr. Skinner was referred to an email exchange between Mr. Tait and Ms. Price dated January 15 and 16, 2015, on which he was copied (Exhibit 2, tab 113). In it, Ms. Price said that she would "investigate all allegations". Mr. Skinner denied that that would have included Ms. Denton's allegation of retaliation because Ms. Price never used that term. They discussed only the hospitality suite. He knew that she was investigating the suite, but she did not call that retaliation. Ms. Price also did not tell Mr. Skinner that she was investigating his behaviour or his swearing.

[173] Mr. Skinner was referred to his testimony that the additional allegations levelled against him should have gone to legal counsel to determine whether they would be approved. He was referred to an email exchange between Mr. Tait and Ms. Roy of January 15, 2014 (Exhibit 2, tab 114), the first email of which stated that all allegations would be considered. Mr. Skinner replied that the additional allegations were made on November 13, 2013, while he was at the regional AGM and that Ms. Roy's email was two months late. By then, the interviews were over. Mr. Skinner had two interviews with Ms. Price, with Mr. Tait present. They disagreed with Ms. Price that there were additional allegations. Ms. Price never mentioned the word "retaliation" to Mr. Skinner. She went back and forth with Mr. Tait. The hospitality suite was discussed but not in terms of retaliation. The issue of retaliation arose two months after the interviews when it was raised in Ms. Price's email to Mr. Tait in January 2014. Mr. Skinner said that he had no opportunity to respond to the retaliation issue because it came out only in the Denton final report, to which he was not allowed to respond. The report was biased because nobody had mentioned retaliation to Mr. Skinner — not PIPSC's legal section, Ms. Roy, or Ms. Denton. The final report did not contain a "retaliation" heading.

[174] Mr. Skinner said that he referred to having relied on his harassment training at paragraph 10 of his complaint to the Board because when he drafted it, he was told (without specifying in his testimony who had allegedly told him) that he did not have to include everything, since he could add to it during the hearing. He said that it was the first time he had drafted a complaint and that perhaps, he should have amended it. He included it in the complaint and not before then because Ms. Price never listened to

his representations, did not know the union environment, and did not consider his training.

[175] Concerning the decision not to have a hospitality suite, Mr. Skinner reiterated that the BC/Yukon Regional Executive made it, not him alone, as indicated in the meeting minutes. He knew that Ms. Aschacher and Peter MacDougall, a member of the BC/Yukon Regional Executive, had said as much to Ms. Price, but it was not reflected in the report. Ms. Price would not listen to the facts. He had told her that had the complainants come to the suite, he would have left. He had arranged for Mr. Lazzara and Mr. Corbett to cover the room.

[176] When it was put to Mr. Skinner that there was an argument in his written submissions to the effect that if there was no hospitality suite, then Ms. Denton could not have been deprived of a benefit, Mr. Skinner said that he did the best he could. It was frustrating talking to an investigator who did not listen to what he had to say.

[177] Mr. Skinner was referred to his testimony about the October 17, 2013, BC/Yukon Regional Executive meeting, in which he said that it had been important to tell his executive about the complaints against him because he feared that he would say or do something that would result in another complaint. He stated that he was forced to inform it because of the hospitality suite. When it was put to him that he could have justified the cancellation of the suite because of the size of the room, Mr. Skinner said that hindsight is 20/20. He pointed out that in his appeal, he mentioned that he could have done things differently. He said that he was right about more complaints being made against him, referring to Ms. Denton's additional allegations.

[178] The next portion of Mr. Skinner's cross-examination dealt with the type of sensitivity training that he was directed to take and with the negotiations between his representatives and the Institute about this issue. In his testimony, Mr. Skinner continued to maintain that the Institute required that the sensitivity training should consist of psychological counselling and a psychological report.

[179] The cross-examination then turned to the apology Mr. Skinner was directed to tender. He was asked whether he thought the apology as drafted was qualified or unqualified. He said that he and Mr. Tait did not know what was meant by "unqualified" and that he should have been allowed to work with Ms. Roy or someone

on the BOD to draft the letter, as had Ms. Bittman. Mr. Skinner maintained that the draft met the qualification of being of an apology. He stated that it was acceptable, especially since it was found that he had not harassed Ms. Mertler. He believed that Ms. Mertler should have apologized to the BC/Yukon Regional Executive and the BC/Yukon region. Mr. Skinner said that at the time the apologies were prepared, he thought that they were unqualified. He asked Ms. Roy how she wanted them drafted; he still did not know as of the hearing.

[180] The cross-examination then dealt with Mr. Skinner's assertion that he was not found guilty of harassment. He was referred to the complaint and the correspondence in which he had made that assertion. Mr. Welchner suggested that when Mr. Skinner was found guilty of retaliation, he had also engaged in harassment because PIPSC's policy states that retaliation constitutes harassment. Mr. Skinner asserted that he was never charged with retaliation and that he never had the opportunity to defend himself against such a charge.

[181] Mr. Welchner then returned to the issue of sensitivity training. He referred Mr. Skinner to several sections of the final reports, in which Ms. Price commented on Mr. Skinner's behaviour, including that he was likely to engage in similar conduct in the future. Mr. Skinner said that Ms. Price is not a psychologist and that she did not interview his character witnesses. She based her comments on her interviews with his political enemies, Ms. Spacek and Mr. Jones, and she was unqualified to make such findings. He questioned how Ms. Price came up with those findings and contended that she was biased.

[182] Mr. Skinner said that he was forced to accept Ms. Noonan because PIPSC would not accept his proposals for a neutral third party. Concerning his testimony that Ms. Noonan said that she was operating in a vacuum, Mr. Skinner was referred to her decision on his appeal (Exhibit 2, tab 83) and was asked whether it indicated that she had been operating in one. Mr. Skinner said that she based her decision on two flawed reports. He tried to submit other documents, but she refused to accept them. Mr. Skinner was informed only on the day of the BOD meeting that his appeal had been referred to a third party. He had been fully prepared to present his appeal of all three complaints to the BOD. He did not agree with the BOD's decision to refer it to a third party. It knew that he had supporters on it, and it felt that it did not have the votes to reject his appeal. In Mr. Lazzara's appeal of his discipline, Mr. Skinner was able to

make representations to the BOD and present affidavits from AFS members. He was also able to respond to the final report. Mr. Skinner had the opportunity to make comments only on the preliminary reports and in his appeal.

[183] Mr. Skinner's allegation of conflict of interest was first raised in his email to Ms. Roy on July 10, 2013 (Exhibit 2, tab 96), several days after the Mertler complaint was made. It asked that a third party determine if an investigation was warranted. At the time, Mr. Skinner supported Mr. Corbett and believed that he would not receive a fair decision from the EC. As for Mr. Fernando's email to Ms. Roy dated August 1, 2013 (Exhibit 2, tab 97), concerning conflict of interest, Mr. Welchner pointed out that the only argument relied on to support such an allegation was the fact that Mr. Skinner was in favour of reducing the number of vice-presidents. Mr. Skinner replied that Mr. Fernando told him to keep his other arguments in reserve at the time. The BOD rejected Mr. Fernando's submission (Exhibit 2, tab 47). Mr. Skinner pointed out that the vice-presidents debated and participated in the decision even though they were the subjects of his objection.

[184] Mr. Skinner was directed to his letter of February 25, 2014, to Ms. Roy (Exhibit 2, tab 100) and his allegation of conflict of interest because he had supported Mr. Lazzara at the BOD. This was the first time Mr. Skinner had raised it in writing. He was referred to page 3 of the letter, in which he raised the friendship of Ms. Friesen, Ms. Bittman, and Ms. Daviau as a basis for his allegation. When Mr. Welchner stated that Mr. Skinner had not relied on that in his appeal (Exhibit 2, tab 66), Mr. Skinner replied that he had already made that argument and that he had been allowed only five pages for his appeal arguments. He had submitted many documents to Ms. Price, which were not in her reports. He cited a statement from Mr. Sahota about the hospitality suite, a statement from Mr. Brown about the delegation to the AGM, and a statement from Ms. Aschacher.

[185] Although PIPSC's *Dispute Resolution and Discipline Policy* states that a BOD member could face discipline if he or she fails to declare a conflict of interest, Mr. Skinner said that that policy requires making a self-declaration and that a BOD member could not be forced to leave the room. He has never known anyone to make a complaint against the EC for not declaring a conflict of interest. Mr. Skinner was directed to the contents of an appendix to the approved minutes of the EC meeting of April 22, 2014 (Exhibit 2, tab 55), which state that Ms. Friesen left the room based on a

conflict of interest. Mr. Welchner also pointed to an email from Ms. Roy to Mr. Skinner on March 10, 2014 (Exhibit 2, tab 95), in which, in the last paragraph, she states that Ms. Friesen removed herself from deliberations. Mr. Skinner replied that even though that was written, it does not necessarily make it so.

[186] The next topic dealt with committee selection, as set out in paragraph 12 of Mr. Skinner's unfair-labour-practice complaint. He attended the BOD meeting of February 21 and 22, 2014, during which the BOD began selecting committee members. He was referred to section 4.13.1 of the meeting minutes (Exhibit 7), which reflected the discussion of the finance committee members. It was pointed out that he had testified that in the past, the BOD had accepted the BC/Yukon region's recommendations, as it did for other regions. Mr. Skinner testified that before he became the regional director, the BC/Yukon Regional Executive would put forward names for committees who often were people on the Regional Executive. He stated that after some discussion at the BOD, everyone usually got what he or she wanted. That changed when Ms. Daviau became president and changed the rules. Mr. Sahota was put forward for the Finance Committee, but Mr. Dickson admitted that he selected a nurse whose name had been put forward by Ms. Friesen. The minutes indicated that Mr. Skinner objected to political interference by Ms. Friesen and by Mr. Burns, who worked at the same correctional institution as did Ms. Friesen. According to Mr. Skinner, the minutes do not reflect what happened. He alleged that at the next meeting of the BOD, Mr. Dickson admitted to what had happened and stated that he had been coerced with respect to his choice of Finance Committee members.

[187] The next part of the cross-examination concerned Mr. Hindle's complaints and the report of a neutral third party, neither of which are entirely relevant to this complaint. Those events have already been outlined earlier in this decision in the section on the background to the complaint. Mr. Skinner said that his biggest problem with Mr. Hindle was that he had a private meeting with delegates to the Regional Council.

[188] With respect to Mr. Skinner's concern about the posting of the final investigation reports on the Virtual Binder, this issue has also been referred to earlier in this decision and needs no further elaboration here.

[189] Mr. Skinner was then referred to his testimony that he could not report to the BOD what was going on in the BC/Yukon region as he had no idea about it. He admitted that after the discipline was imposed on him, he continued to attend regular BC/Yukon Regional Executive meetings, which were held five times per year, including one at the same time as the Regional Council and one at the same time as the Steward Council. Mr. Skinner stated that only one Regional Council meeting was held after the discipline was imposed on him. Concerning communication with members of the Regional Executive, he did not know two or three committee members, e.g., the nurse on the Finance Committee. Part of the discipline required that he had to ask Ms. Daviau for funds. Mr. Skinner requested funds for the new Finance Committee member to attend the meeting as that person was not a delegate. He also requested funds for Mr. Dickson to attend, as he was willing to, but the BOD refused both times. The funding refusal was about not wanting Mr. Skinner to be re-elected. When it was put to him that he did not need permission to communicate with the newly appointed Finance Committee member, Mr. Skinner asked why he should communicate with that person if he did not have the funding to send that person to the meeting. If someone from the BC/Yukon Regional Executive had been on the Finance Committee, the region would have had a report, because his region's constitution required that the member submit a report to the Regional Executive. The new committee member never communicated with him. Mr. Skinner needed someone to provide a financial update. It was not his job to make a presentation. It was the role of either the new member, the chief financial officer, or the chair of the Finance Committee.

[190] Mr. Skinner was referred to his testimony that Ms. Bittman was assisted with her apology to David Gray, a PIPSC vice-president, while he was not provided similar assistance. He testified he was at the BOD meeting where Atlantic Director Brian Thompson was tasked to help Ms. Bittman. Mr. Skinner was referred the minutes of the BOD meeting of April 19 and 20, 2013 (Exhibit 27), which state that he had to ensure that his apology "complies with requirements." When it was put to him that that does not mean assistance, Mr. Skinner replied that was Mr. Welchner's interpretation. Mr. Thompson was assigned to help Ms. Bittman. At the next BOD meeting, he reported that the letter had been agreed on and issued (Exhibit 1, tab 15, last page).

[191] Mr. Skinner was referred to his testimony that Edward Gillis, the chief operating officer (COO) and executive secretary, could not have bothered to check PIPSC's website to determine whether the BC/Yukon Regional Executive minutes concerning

the hospitality suite being cancelled had been posted. Mr. Skinner said that Mr. Gillis often edited the website and that Ms. Roy had a fiduciary responsibility to check the website to determine whether the minutes had been posted. As the region received funding for the meeting, the minutes had to be posted.

[192] Mr. Skinner confirmed that he was never denied membership in PIPSC, was never expelled from membership, and never had his membership suspended except perhaps when he went on three months of sick leave, but he stated that he was not certain.

3. Mr. Skinner: Re-examination

[193] Mr. Skinner referred to his email to the PIPSC president's executive assistant, Nicole Gauthier, of October 25, 2012 (Exhibit 28). It was sent in response to an earlier letter he had received from Mr. Corbett advising him that while Mr. Jones's allegations did not meet the requirements of a valid harassment complaint, the EC was disappointed that he did not avail himself of an "opportunity to engage in discussions … to attempt to deal with some of the issues raised in the complaint" (Exhibit 2, tab 58). In his email to Ms. Gauthier, Mr. Skinner indicated that that allegation was incorrect and that he had agreed to a meeting that was cancelled by Mr. Burns and Mr. Corbett, not by him. Mr. Skinner said that he did not receive a reply to his email to Ms. Gauthier. He said that Mr. Corbett's letter of October 24, 2012, alleged that Mr. Skinner was unavailable. He stated that that was constantly referred to as an example because of his bad behaviour. Everyone knew of his issues with Mr. Jones. Mr. Skinner indicated that he did not pursue the issue with Ms. Gauthier because Mr. Corbett had asked him not to and had advised him at that time that the letter was not disciplinary. As he was a new director, he did as Mr. Corbett asked.

[194] Mr. Skinner then referred to the minutes of the BOD meeting of April 19 and 20, 2013 (Exhibit 27, pages 5 and 6), and to the passages concerning providing an apology. He characterized the minutes as a summary of the BOD's discussion. He stated that the second paragraph on page 5, which outlined the type of apology Ms. Bittman was to provide to Mr. Gray, seemed similar to the directions in his letter of discipline. The directions to Ms. Bittman stated that her apology had to be "unqualified" and "contain no justifications or criticisms of Mr. Gray." She was also advised to acknowledge that her actions had constituted harassment. Mr. Skinner then compared his draft apology to Ms. Denton (Exhibit 2, tab 86) with Ms. Bittman's

apology (Exhibit E-1, tab 15) and said that his letter to Ms. Denton was basically the same as Ms. Bittman's, which was qualified. He stated that even though his letter was better than hers, nonetheless, it had been refused. He stated that Ms. Bittman was on the EC when it decided whether to accept his letter.

[195] Mr. Skinner then turned to Ms. Roy's letter dated September 11, 2013 (Exhibit 2, tab 23), advising him that the EC had referred the Friesen and Mertler complaints for investigation. He said that the investigation mandate did not state that bad behaviour should be looked into but that the EC mandated only investigating harassment. In his opinion, the matter should have gone to the BOD.

[196] Mr. Skinner referred to Ms. Roy's letter to him dated June 24, 2014, advising him that the BOD had retained the services of a neutral third party to decide his appeal (Exhibit 2, tab 71), to "… avoid any perception of lack of impartiality." He said that that meant a perception of bias or a conflict of interest. The BOD said as much on June 24, 2014, even though Mr. Skinner and his representatives had said so all along. He questioned why the BOD had not said so before then.

[197] Mr. Skinner then referred to Ms. Roy's email to Mr. Fernando of September 9, 2013 (Exhibit 2, tab 98), advising him that there had been an insufficient quorum at the EC meeting to deal with the issue of conflict of interest. Mr. Skinner said that had Mr. Fernando been listened to, he would not be here today. The matter should have been dealt with appropriately.

[198] Lastly, Mr. Skinner referred to the third paragraph of an email he wrote to Ms. Roy and Mr. Gillis on July 25, 2014 (Exhibit 2, tab 121), and to his testimony that he believed that Ms. Friesen had been involved in the BOD or EC meetings when his case was being discussed, despite her alleged recusal. In the email, he stated that "from the EC closed session minutes" he understood that Ms. Friesen was "present in the room and by extension more likely than not, fully engaged and influencing the EC at the EC closed session." Mr. Skinner stated this is where he obtained the relevant paragraph in his complaint. He noted that he had never received a response to that email stating that he was wrong. His recollection is that Ms. Friesen was in the EC's closed session when his case was being discussed.

4. Ms. Aschacher

a. Examination-in-chief

[199] Ms. Aschacher, a nurse, has been a member of PIPSC since 1981. She has lived in Whitehorse, Yukon, since 1990 and has been a member of the branch and group executive since 1993. She was on the executive during the tenure of three regional directors. She has been named Yukon Steward of the Year and Regional Steward of the Year.

[200] The first regional director she served with was Mr. Jones. Ms. Aschacher assumed that issues raised with the BC/Yukon Regional Executive were automatically brought to the BOD. During an AGM when Ms. Daviau was a vice-president, they met in a hallway. Ms. Daviau told her that when Mr. Jones addressed the BOD, he would table an issue, but she made it clear that it was what his Regional Executive wanted him to raise and that he would indicate that he did not support it. Ms. Daviau said that that was not very good. Ms. Aschacher agreed.

[201] The next regional director she served with was Mr. Skinner. She described him as a much-respected member of PIPSC who had significant experience representing members. The BC/Yukon Regional Executive were excited to have an experienced person whom they knew would represent their issues at the BOD. When Mr. Skinner was the regional director, matters were handled professionally. Issues were arrived at by discussion at the Regional Executive. They agreed by consensus on the issues to be brought to the BOD. Consensus was reached either by vote or by going around the table.

[202] Ms. Aschacher then referred to the minutes of the BC/Yukon Regional Executive meeting of October 17, 2013, concerning the hospitality suite (Exhibit 1, tab 14). Under item 21, titled “Roundtable”, the following reference is found: “No Hospitality room at this year’s Steward Council.” As background to that decision, Ms. Aschacher said that it was normal to have some hospitality. The regional director would have a larger room to host. But once they arrived at the resort, they noticed that Mr. Skinner was given a smaller room with a couch and one bathroom that did not hold many people and that was not appropriate for hosting a hospitality suite. At a Steward Council meeting, 80 to 90 people would attend. At the Regional Executive meeting the day before the Steward Council meeting, Mr. Skinner had expressed concern. Without stating any names, it was

mentioned that a complaint had been made against him. There was a consensus that there should not be a hospitality suite, and it was not advertised as one. Anyone could have stopped by, but there was nothing formal about it.

[203] Ms. Aschacher communicated with PIPSC's legal section for guidance on the "protocol for the next meeting" (Exhibit 1, tab 12). Mr. Sahota was the chair of the BC/Yukon Regional Executive, and Ms. Aschacher was the vice-chair. The reply indicated that the business of the region was to proceed in its normal course, including meetings of the Regional Executive. Her interpretation of the reply was that it was not helpful. She had expected something like what is taught in harassment training, which is to keep the parties apart. Ms. Aschacher wanted some direction from PIPSC. The BC/Yukon Regional Executive was a toxic environment of which PIPSC was aware and about which it was not helpful.

[204] Ms. Aschacher said that in December 2013, she was interviewed by Ms. Price in Vancouver during a lunch break at a BC/Yukon Regional Executive meeting. When Ms. Price told her that she could have someone with her as a representative, Ms. Aschacher said that she did not know anyone and that she was from Whitehorse, so having a representative was not appropriate at that time. Ms. Price then asked her questions. She was not asked to review or sign her witness statement and never heard of it again. Ms. Aschacher believed that Ms. Price asked her about the hospitality suite, but she did not recall what she said.

[205] Ms. Aschacher said that as of the Steward Council meeting, Mr. Skinner was being "brutalized". At the meeting, which took place the day after the Regional Executive meeting, Ms. Aschacher sat at a table with members she did not know well. One of them said that they had to support Ms. Denton. When Ms. Aschacher asked why, the member said it was because Ms. Denton was being bullied by the executive. When she asked where the member had obtained that information, the reply was that she had been "hearing it around." Ms. Aschacher said that that is when she realized that Ms. Denton was against the whole executive.

[206] Mr. Skinner told Ms. Aschacher about Ms. Denton's complaint because she was to be a witness in its investigation, and he had to defend himself. She did not view that as a breach of confidentiality.

[207] She was then referred to the final report on the Denton complaint (Exhibit 2, tab 53, page 47) and to the first italicized paragraph about the hospitality suite, which referred to Mr. Skinner not allowing the complainant into his hospitality suite. She stated that it was not accurate. The information about the hospitality suite was posted before the complaint investigation, so PIPSC knew about it.

[208] Ms. Aschacher stated that she disagreed with the statement in the fourth paragraph of Ms. Roy's summary of the Friesen complaint (Exhibit 2, tab 20, Appendix A), which describes "members of BC" being afraid to go against Mr. Skinner as they claimed that he was a "bully and fear his reprimand". She stated that she did not know what that meant. The regional director has no authority to reprimand. The members of the executive have been in PIPSC a long time and should know that the regional director has no such authority. PIPSC knew what was going on, as it offered mediation to the executive but then let it continue, to the point of ridiculousness.

[209] Concerning PIPSC sending Mr. Hindle to monitor meetings, Ms. Aschacher did not think that he was impartial. She thought that he was sent to see how bad things were. Ms. Roy wrote that the BC/Yukon Regional Executive was disrespectful and not inclusive.

[210] During the entire time it was being told how bad of an executive it was, PIPSC never told it how PIPSC could help. Sending in Mr. Hindle almost made it more divisive. Ms. Aschacher did not know what behaviour was acceptable for PIPSC. Her view was that there was a lack of leadership at PIPSC. It tried to focus on Mr. Skinner, and it hobbled him. It brought him and the whole executive down. Ms. Aschacher tried several times to talk to Ms. Daviau, but she refused to talk.

[211] From Ms. Aschacher's observation, the EC singled out Mr. Skinner. He was causing all the problems, and he had to be dealt with. It took place over time. The EC refused to let him travel, cut off his funding, and took away his regional director duties. He went from being respected and being a good representative of the members to being a joke.

[212] Ms. Aschacher was then referred to the Denton preliminary report (Exhibit 2, tab 50, page 56, second bullet) and stated that she disagreed with the statement that Mr. Skinner had a "… history of conflict with both men and women." She said that the

executive respected him. They would have lunch and sometimes dinner together. Ms. Denton would join them.

[213] Ms. Aschacher agreed with the statement that Ms. Denton had bullied and harassed Mr. Skinner. She said that Ms. Denton was not a productive or particularly helpful member of the executive and that she was dismissive of Mr. Skinner.

[214] Ms. Aschacher said that PIPSC retaliated rather than being helpful. Mr. Skinner was invited to an AFS branch meeting by the executive, which was told that if he showed up, he was to be escorted out. He did attend, and the branch was reprimanded by the removal of some of its funding. Ms. Aschacher stated that she is aware of that because the AFS branch president came to the executive for help having the funding restored. To Ms. Aschacher, it seemed that Mr. Skinner was being targeted by PIPSC.

[215] Concerning the proposed reduction to the number of vice-presidents, Ms. Aschacher said that the BC/Yukon Regional Executive proposed a resolution to bring to the AGM. It was one of several resolutions brought to the Regional Council for the delegates' approval. She said that Ms. Denton was upset with the resolution because she had just been elected as a vice-president. She wanted an emergency EC meeting to review the resolution and to have it withdrawn. Ms. Denton usually did not show up at B.C. functions, but she attended that one Regional Council meeting and left when the resolution was brought up for discussion. Ms. Aschacher knew that Ms. Denton was upset because of her emails to the EC.

b. Cross-examination

[216] Ms. Aschacher did not recall whether, at the BC/Yukon Regional Executive meeting of October 17, 2013, the appropriateness of having complainants in the hospitality suite was discussed. The discussion was about whether there would be a hospitality suite.

[217] Concerning the interview with Ms. Price and the offer of a representative, Ms. Aschacher acknowledged that she could have said that she would not be interviewed without one but stated that she had not thought of it. She is a nurse and does not have a law background. Ms. Price did not present options, such as interviewing by telephone. Ms. Aschacher was in Vancouver; she did not know anyone. When she was asked why she did not ask that the meeting be deferred, she replied that

she did not know that doing so was an option. Ms. Aschacher stated that she did not read Ms. Price's investigation report.

[218] Ms. Aschacher was referred to the Denton final report (Exhibit 2, tab 53, page 49, at the last paragraph) and to her comment to the investigator that Ms. Roy's reply to her request to PIPSC's legal section asking how to proceed with meetings given the complaint "didn't say much." Ms. Aschacher said that that was correct. Ms. Roy responded on October 15, and the meeting was held on October 17. The timing of the response did not allow for a follow-up before the meeting. PIPSC's assistance was slow to come. She hoped that PIPSC would help make the meeting go smoothly, but it said to continue with the business of the day, which was not functional. PIPSC was aware of many complaints from the BC/Yukon region.

[219] When she was asked if she had asked Ms. Roy whether complainants should be admitted to the hospitality suite, Ms. Aschacher said that she did not know that it would be an issue. When she was asked if before arriving at the resort, she thought that there would be a hospitality suite, she replied that at the time, it was not a big deal. If Ms. Denton wanted to go to the suite, it was her choice.

[220] The Denton final report was then referenced, specifically Ms. Aschacher's discussion with Mr. MacDougall and Mr. Skinner as to whether Ms. Denton should be allowed into the suite. The third paragraph on page 48 states that Mr. Skinner advised the investigator as follows: "I have to avoid them …". Ms. Aschacher said that it did not happen that way. They discussed it and thought that it was not a good idea. It was brought to the BC/Yukon Regional Executive, which made the decision. To Ms. Aschacher, it was not that big of a deal. She said that she has good recall of it. The decision was not made by her, Mr. Skinner, and Mr. MacDougall. She was directed to page 49, at which the investigator wrote that she had asked Mr. Skinner "if he said he would not allow the complainants into the hospitality suite" and that he had replied that that was the case. Ms. Aschacher did not recall Mr. Skinner saying that. When she was asked if it was possible that he said it and that she did not recall, she replied that anything is possible. She specified that whatever was said before the executive meeting did not matter because the executive made the decision.

[221] Ms. Aschacher was then asked about statements she had reportedly made to the investigator with respect to a conversation she had with Ms. Denton about the

hospitality suite and whether Ms. Denton intended to attend. Ms. Aschacher did not recall her statement and stated that she had not been given a copy of the report. As far as she knew, Ms. Denton was in the room during the Regional Executive's discussion about the hospitality suite. She stated that she knew about Ms. Denton's complaint but that she did not know whether anyone else on the executive knew of it.

[222] No invitation to the hospitality suite was sent out. Ms. Aschacher stated that "the word gets out pretty fast". She went to Mr. Skinner's room, where only a handful of people had gathered; she did not stay long.

[223] Ms. Aschacher was then directed to the minutes of the EC meeting of July 3, 2013 (Exhibit 2, tab 20), which state that B.C. members felt that Mr. Skinner was a "bully" and that they feared his reprimand. When it was put to her that she would not know if a member felt that way, Ms. Aschacher said that she relied on her observations at the meetings she attended. Mr. Skinner attended meetings before he became the regional director, and she never saw that anyone was afraid of him. She stated that she does not believe that members in B.C. were afraid of him and claimed that he was a bully. When it was put to her that she could not know every B.C. member and whether each one was afraid of Mr. Skinner, Ms. Aschacher replied, "You mean just like the person who made that statement knows every person." She said that she was not saying that she knows more or less than the person who made the statement.

[224] Concerning her testimony that she was disappointed that PIPSC made no attempt to deal with the situation in the BC/Yukon Regional Executive, such as using mediation, Ms. Aschacher was asked if she knew that Mr. Skinner had turned down an offer to informally resolve the complaint. She replied that she did not know that and that she did not know what was offered to one person, only what was offered to the executive as a whole.

[225] Ms. Aschacher's view was that Mr. Hindle was not impartial because he arrived with a "bit of an attitude" to observe the workings of the executive and Mr. Skinner in particular. He never spoke to her. She was the chair of the Communications Committee when Mr. Hindle came into the meeting and sat down. She asked him why he was there, and he said because Mr. Skinner would attend. When she told him that Mr. Skinner would not attend, Mr. Hindle left. It was a missed opportunity to discuss issues. To her, it felt as though Mr. Hindle had been sent to see how disrespectful and divisive the

executive was. He was not there to discuss issues. He sat at meetings, took notes, and never asked for feedback. Ms. Roy had written an email stating that the executive had been found disrespectful and non-inclusive. Ms. Aschacher said that the email was no longer on her phone. When Mr. Welchner told her that he understood that Ms. Roy had said the opposite, Ms. Aschacher replied that in a meeting that Mr. Hindle attended, she had read the email to him from her phone. I note that PIPSC's position is that no such email exists.

[226] Ms. Aschacher was then referred to Ms. Roy's letter of May 30, 2014, addressed to the BC/Yukon Regional Executive (Exhibit 2, tab 119), in which she advised it that the Institute had dismissed its complaint against the EC's decision to appoint Mr. Hindle to work with the Regional Executive. Ms. Roy stated that the complaint was found "frivolous and without merit". Ms. Aschacher stated that she said that in a comparable workplace, a grid was in place to ensure equal treatment. If one is in good favour with PIPSC, things are dismissed easily. She stated there were different outcomes to different complaints by different people, depending on where they stood. Mr. Skinner was not a particular favourite of the BOD, and she said that he was disciplined "to the nth degree." Ms. Aschacher had served on the executive with three different directors. Robert MacDonald was in PIPSC's favour and obtained what the Regional Executive wanted. He held three meetings in Victoria, British Columbia, and members asked where the money was coming from. Mr. Skinner had begged to hold any meeting outside Vancouver. But when he was the regional director, the members always knew where the money went.

[227] When she was asked to explain her testimony that Mr. Skinner had been "brutalized", she stated that she meant that he was completely defeated emotionally. He was unfairly beaten down. When she was asked whether her view was that PIPSC caused the complaints to be made, Ms. Aschacher said that it was poor leadership to let things reach the point that Mr. Skinner was stripped of his functions.

[228] When she was asked whether it was unfair that Ms. Denton's complaint was investigated, Ms. Aschacher replied that she understood that a complaint goes to the BOD and that if it thinks that it should be investigated, then it is investigated. Mr. Welchner then stated that the general counsel decides if a complaint is to be investigated. Ms. Aschacher stated that she thought that a complaint should not be investigated if the matter at issue could be talked out.

[229] Ms. Aschacher was referred to PIPSC's offer of mediation in the Friesen complaint (Exhibit 2, tab 17). She expressed that she thought that it was a good step but that it also depended on when it occurred. She was not saying whether the investigation should have occurred. PIPSC let things go too long. The fact that the Denton complaint was investigated was not a factor in Ms. Aschacher's conclusion that Mr. Skinner was "brutalized" by PIPSC. She stated that her comment needed to be put in the context that at the time, she was being questioned by Ms. Price. Three different people had made complaints against Mr. Skinner.

[230] Ms. Aschacher stated that she believes that the Friesen and Mertler complaints were part of the brutalization of Mr. Skinner. She did not think that things should have gone as far as they did. PIPSC should have stepped in earlier. Ms. Aschacher served on the executive with Ms. Denton for years, yet Ms. Denton had never told her that she had a problem with Mr. Skinner. When she was challenged on her allegation that PIPSC did not step in early enough, Ms. Aschacher acknowledged that she had no first-hand knowledge of whether PIPSC knew of the complaints in advance. However, she added that she thought that a complaint should not be made without warning, and Ms. Denton never said a word. Ms. Aschacher then stated that as Ms. Denton had told people that she was being bullied by the executive at the Steward Council, "How did PIPSC not know?" Mr. Welchner pointed out that Ms. Aschacher could not assert any knowledge of the issue.

[231] Concerning her testimony that the EC or BOD singled out Mr. Skinner and that he was a target, Ms. Aschacher stated that she based it on the complaints, Mr. Hindle's observation of Mr. Skinner, and the continual attack on him. Ms. Aschacher said that the onus is on the person being harassed to notify the harasser that something needs to stop. Ms. Denton had received considerable harassment training and should have known what to do.

[232] Ms. Aschacher asserted that her view was that the EC or the BOD had targeted Mr. Skinner, as complaints go to legal counsel, and the BOD is aware of them. At some point, the EC and BOD should step in and do something.

[233] With respect to the Denton preliminary report (Exhibit 2, tab 50), Ms. Aschacher agreed with the first sentence on page 54, in which Mr. Skinner alleged that he was being "'bullied and harassed' by Ms. Denton." Ms. Aschacher stated that Ms. Denton

was a poor performer who caused issues. For her, making a harassment complaint without discussing it with the person beforehand is bullying. Ms. Denton said that she was singled out in a meeting, which did not happen.

c. Re-examination

[234] In reference to her testimony about PIPSC's knowledge of the hospitality suite, Ms. Aschacher stated that she assumed that PIPSC and its legal section knew that there would be one because the larger functions always have one. Generally, the regional director has a larger room. If there is a proper hospitality suite, a notice is issued. If there is no formal suite, it is announced by word of mouth.

[235] The Steward Council is open to all stewards. The delegates to the Regional Council (about 65 of them) represent members of the BC/Yukon region. Ms. Aschacher confirmed that she socialized with them but that nobody said anything about bullying.

5. Mr. Sahota

a. Examination-in-chief

[236] Mr. Sahota's PIPSC experience includes being a steward from 2010 through 2014; being named Steward of the Year for 2014; being the vice-president of the Vancouver subgroup, then the vice-president and president of the Vancouver CRA branch; being the regional representative for the AFS on the national executive; and finally, being a member and the chair of the BC/Yukon Regional Executive. He holds both Chartered Professional Accountant (CPA) and Certified Management Accountant (CMA) professional designations.

[237] Mr. Sahota was shown the first paragraph of the Denton complaint (Exhibit 2, tab 41), in which Ms. Denton states that in addition to being harassed by Mr. Skinner, she also felt harassed by Mr. Sahota. He said that PIPSC did not notify him about it but agreed that he had seen the document. Without knowing its substance, it appeared to be a complaint about him.

[238] Concerning the allegation in the second paragraph of the complaint to the effect that Mr. Skinner had "blocked" Ms. Denton's attendance at the PIPSC's AGM, Mr. Sahota said that at that time, he was responsible for delegate allocation. He then explained the delegate allocation in detail, none of which is relevant to my decision.

[239] The next part of Mr. Sahota's testimony dealt with the selection process for the Steward of the Year award. First, he stated that to correct the recent apathy surrounding the award and to increase its profile, the BC/Yukon Regional Executive had decided to advertise its availability. It had also decided that there would be no award in years of an insufficient number of nominees or candidates. In 2013, no Steward of the Year award was given due to such an insufficient number of candidates.

[240] Mr. Sahota was referred to investigation report in the Denton internal complaint and to the allegation of bullying against Mr. Skinner. He stated that he disagreed with the comments; Mr. Skinner helped Ms. Denton become involved at the branch and regional levels. She had previously been unknown to Mr. Sahota or to others. He was unaware of gender bias at the BC/Yukon level and could not speak to PIPSC at the national level. Mr. Sahota stated that he did not consider an individual's gender when considering the person's suitability for a union role and did not think that Mr. Skinner did either. Anyone willing to become involved in and work with PIPSC is considered.

[241] Mr. Sahota gave Ms. Denton directions as to how delegates were selected and the criteria that had to be followed. When she did not follow the criteria, he told her, "Chalk it up to a learning experience." Ms. Denton had put her name forward as a delegate. Mr. Sahota said that she was probably the "last person qualified" to attend the AGM that year.

[242] Mr. Sahota was again referred to the Denton investigation report and the allegations contained in it. He stated that it indicated that Ms. Denton aspired to move up in the union. In his experience at the BC/Yukon Regional Executive, she had never wanted to work. Her job was to take minutes and when she took them, they were well done. They were generally late, and she had to be called to complete them. She did not do much of what she said she did. She discussed her political aspirations. When they did not work out, she worked to undermine Mr. Skinner and her other political opponents.

[243] Mr. Sahota was referred to page 47 of the Denton final report, concerning the hospitality suite. He stated he was not at the October 17, 2013, BC/Yukon Regional Executive meeting but that he did attend the October 18 Steward Council meeting. He was told of the decision not to have a hospitality suite. Mr. Skinner did not want to be alone with the complainants, whoever they were. There was no announcement to

delegates that there was a hospitality suite. Individuals could just show up if they wanted to. Very few did. When Mr. Sahota was there, some just entered and then left. The suite was cancelled because the room was too small. Mr. Sahota had hosted hospitality suites, which were always held in larger rooMs. Had he had Mr. Skinner's room, he would not have hosted a hospitality suite.

[244] Mr. Sahota acknowledged that he was interviewed by Ms. Price. When he was asked if she discussed the October 17, 2013, incident, he replied that the bulk of her questions were about delegate selection and whether Mr. Skinner had interfered with Ms. Denton's place as a delegate to the AGM. He did not have a good recall as to what he said, because Ms. Price never gave him a document about his statement to her.

[245] Mr. Sahota was then referred to page 48 of the final report and to the issue of Mr. Skinner having obtained witness statements. Mr. Sahota recalled that Mr. Skinner asked him to write down what he remembered, as a complaint had been made, and Mr. Skinner might need a statement from him. Mr. Sahota said that that is how stewards normally prepare. Mr. Skinner did not attempt to influence him. Mr. Skinner told him the name of the complainant but not the substance of the complaint. Mr. Sahota did not view that as a breach of confidentiality. Mr. Sahota provided a statement to Ms. Price, but not to Mr. Skinner or his representative. Ms. Price did not give Mr. Sahota a document to review and never returned any document to him.

[246] Concerning bad behaviour, Mr. Sahota said that PIPSC never provided him with a document setting out what would be considered bad behaviour. He has his views but stated that what PIPSC perceives as bad behaviour depends on the person or those in power. Swearing does not seem to be bad behaviour for PIPSC because it is commonplace. At a PIPSC-sanctioned event, he was called a racially offensive term. Such comments were quite common at PIPSC events. At times in meetings, matters become heated. If someone has a different view, people become loud and will swear. Under PIPSC's *Harassment Policy*, generally, it is not to be tolerated, but it depends on whether people complain, and not many do. If an individual observes such harassment, the person can act on it. Mr. Sahota would expect those in PIPSC to do the same. Mr. Sahota said that not all harassment complaints have to go to PIPSC's legal section, as they can be dealt with locally. He said that as a branch president, he should be able to address one. If someone uses profanity at a meeting, he would not be persuaded that it would be harassment in the context of a PIPSC meeting, while it might be in

another context. PIPSC does not provide training on bad behaviour at its meetings or on what would be unacceptable behaviour for elected officials.

[247] Concerning whether PIPSC had a disciplinary grid, as did the CRA, indicating the consequences of bad behaviour, Mr. Sahota stated that it did not. Union representatives use the CRA grid to defend employees. Mr. Sahota thinks that PIPSC needs some document setting out what constitutes bad behaviour and what is acceptable, which would indicate its organizational values.

[248] Mr. Sahota then reasserted that the application of discipline at PIPSC depends on who is in power. The might of the entire organization is brought against individuals, who are then alone. Those to whom the people in power are sympathetic receive resources, and the others are left to themselves, regardless of the merits of the situation. Mr. Sahota has argued in the past that in an internal complaint, either both sides should be provided representation, or neither side should receive it. He has never had an internal complaint made against him. He made such a complaint against PIPSC and had no resources; no one in PIPSC was prepared to defend him, and he was on his own. For almost every complaint Mr. Sahota has observed, those who were not represented tended to be on the outs. The people on the EC, acting in concert with senior PIPSC staff, such as legal counsel and Mr. Gillis, the chief operating officer (COO), “bring it to bear” on the individual. It is a daunting experience.

[249] Mr. Sahota does not think that the process is remotely fair. As union officials, they would not tolerate it in the workplace. Virtually all the processes are generally unfair, particularly if members of the EC or PIPSC senior staff have a particular interest in the matter. Mr. Skinner was the regional director. The EC might have had gripes with him, but it interfered with the way the BC/Yukon Regional Executive did business. The executive complained, but in vain, because, in Mr. Sahota’s words, “You’re complaining to people whom you’re complaining about. They hold the hammer.”

[250] Mr. Sahota stated that while the process may look good superficially on paper, it is not in fact good. For a harassment complaint, PIPSC selects the investigator, determines the mandate, and limits who the investigator talks to, and the EC is given the investigation report before the complainant or his or her representative sees it. PIPSC can tinker with it, as they hire and pay the investigator. The EC makes a decision even if the complaint involves it. It then goes to the BOD, so the EC gets to vote again

on its decision. It would be more appropriate if EC members were removed from the vote. While Mr. Skinner's appeal went to a neutral third party, the bottom line is that the investigator is selected by the EC, which defines the mandate and imposes discipline.

[251] Concerning conflict of interest, Mr. Sahota said it should not be up to the EC to determine if there is one. Some parts of PIPSC have a better process. At the AFS national executive, those who are in any way connected to a decision must remove themselves. Mr. Sahota was one of three candidates for nomination by the AFS to the Occupational Health and Safety Committee. The candidates had an opportunity to make a presentation and then had to leave the room while the executive deliberated on a decision. He said that is not the case at the EC or BOD.

[252] Mr. Sahota was referred to the minutes of the EC meeting held on July 3, 2013 (Exhibit 2, tab 20, Appendix A), and the allegation that Mr. Skinner was a bully whose reprimand B.C. members feared. Mr. Sahota disagreed that those members were afraid to go against Mr. Skinner. He has known Mr. Skinner for 10 years. He has had conversations with members with Mr. Skinner both present and absent. The largest proportion of B.C. members belongs to the AFS. As a regional representative, Mr. Sahota goes to every office in the region and has contact with the executive members in those offices. As a regional executive, he has also gotten to know members outside the AFS. The common theme was that members in trouble would want Mr. Skinner in their corners. The only people Mr. Sahota could see making such a statement were political opponents or those with an axe to grind.

[253] Mr. Sahota stated that he knew some members of the EC. Based on his observations while on the BC/Yukon Regional Executive, some of them had negative feelings toward Mr. Skinner and seemed to hold people associated with him in a negative light. Mr. Burns made negative comments to Mr. Sahota about Mr. Skinner and then said that Mr. Sahota was a friend of Mr. Skinner, which to him seemed to say that Mr. Sahota was held in the same negative light. Mr. Sahota referred to the steps taken by the EC to interfere with Mr. Skinner's discharge of his duties as the regional director and mentioned how it "turned on" the BC/Yukon Regional Executive because it supported him.

[254] Concerning the Mertler incident, Mr. Sahota said that she had been highly inebriated at the hospitality suite. At the Regional Council meeting the next day, Mr. Sahota sat with Mr. Skinner. They could see Ms. Mertler, who was leaning back. It looked like her eyes were closed. She was not engaged in the debate. Mr. Skinner went to her and said something to her. She was there for a purpose, and her behaviour was not acceptable.

[255] Mr. Sahota referred to Ms. Daviau's letter to Ms. Mertler of May 29, 2014, in which she apologized in part on behalf of the Institute (Exhibit 3). In Mr. Sahota's view, Mr. Skinner's action did not require an apology based on behaviour at PIPSC, where profanity was not always used but was not unusual. Mr. Skinner had exercised his rights. It seemed that PIPSC found him guilty and confirmed its bias. To Mr. Sahota, it was absurd that the president of a 50 000-member organization would have time to look into such a matter. That is done only when the person has an interest and is part of the favouritism exercised by people in authority, such as the EC. The matter could have been handled by Mr. Skinner and Ms. Mertler, as they had conversed freely and cordially in the past. It was not up to PIPSC to apologize, as it did not commit the act at issue. If it was wrongdoing by Mr. Skinner, he should have apologized.

[256] Mr. Sahota testified that politics is unnecessarily inherent in the decision-making process. The people at the top are involved in the day-to-day minutiae of the union, although there are constituent bodies to handle matters.

b. Cross-examination

[257] In 2013 and 2014, Mr. Sahota considered Mr. Skinner a professional colleague with respect to union activities and socialized with him at union events. He occasionally had dinner at Mr. Skinner's home.

[258] Concerning the hospitality suite, neither Mr. Skinner's room nor any other room occupied by a PIPSC member was designated as one, and the delegates were not advised that they could go to his room for free drinks. They are private rooMs. If someone knocks on Mr. Sahota's door, he can choose whether to let the person in. The only hospitality suites advertised are those at which members are expected to drop by.

[259] With respect to the occasions on which PIPSC members made racial comments to him, Mr. Sahota said while he could have made harassment complaints, he chose not

to. He did not consider it harassment because of the context. One has to consider the relationships of the people involved. A remark made within a given group may be acceptable but may not be when it is made in another context. If he felt the need to make a complaint, his first step would be to talk to the individual who made the comment. Although members could read PIPSC's *Harassment Policy*, he stated that there is no formal program to make elected officials or members aware of it.

[260] When he was asked to provide an example of favouritism or unequal treatment at PIPSC, Mr. Sahota referred to a PIPSC rule that prohibits political campaigning at its events. The event organizer can allow campaigning outside the room, but only if all candidates receive the same opportunity. He emailed Ms. Friesen about a town-hall meeting, which was a disguise to allow one individual, Robert MacDonald, Mr. Skinner's political opponent, to campaign for office. Mr. Sahota asked Ms. Friesen why Mr. MacDonald's campaign materials were made available and asked why Mr. Skinner was not invited. He eventually received a reply from Mr. Jones, a political opponent of Mr. Skinner, who said that he had been the event organizer, that he was tired of Mr. Sahota bringing up these issues, and that he was inclined to make a harassment complaint against Mr. Sahota on behalf of Mr. MacDonald.

[261] Mr. Sahota responded to Mr. Jones. He stated that his email had not been directed to Mr. Jones, and he denied that his conduct constituted harassment. As Ms. Daviau had put everyone on notice about disrespectful communication, Mr. Sahota threatened to, in turn, make a harassment complaint against Mr. Jones on behalf of a third party. He included the direction from the Election Committee about the campaigning rule. Mr. Sahota copied Ms. Daviau on the email, but she never responded. She had been fined for violating election rules. When Mr. Sahota raised the matter with the Election Committee, it did nothing. Mr. Jones was rewarded with a position on a BOD committee, and Mr. Skinner's rights to campaign for office were violated.

[262] Mr. Sahota asserted that because Ms. Daviau was friends with Mr. Jones, she overlooked behaviour on his part that met the definition of harassment. Mr. Sahota stated that she had a leadership role but that she did not step in, although she became involved in other matters. He did not make a complaint.

[263] Mr. Sahota was referred to his earlier testimony to the effect that similar harassment allegations were not treated similarly but instead, the treatment was based

on the respondent and who was in power. Mr. Sahota admitted that since the process was confidential, he would not know this as a fact unless he was called as a witness.

[264] The next part of Mr. Sahota's cross-examination concerned his testimony that PIPSC should implement something similar to the CRA's disciplinary grid to provide guidelines as to what behaviour is acceptable and unacceptable and the potential consequences of unacceptable behaviour. I will not summarize this testimony, as it is not material to my decision on Mr. Skinner's complaint, as will become clear later in these reasons.

[265] Mr. Sahota was referred to his testimony that in matters of internal complaints, both sides should have representation or neither side should, and to his belief that this should also apply to harassment complaints. Mr. Sahota stated that in the context of PIPSC, both sides should be provided the same resources, or neither should be provided them. Mr. Sahota said that people are "on the ins or outs", which determines whether they receive representation. That is arbitrary. He said that this hearing was an example, as PIPSC paid its counsel while Mr. Skinner was represented by a colleague, who was on his own. According to Mr. Sahota, there should be directors' liability insurance. He lamented that Mr. Skinner was depleting his resources when PIPSC's actions caused him to defend himself. Mr. Sahota said that PIPSC appears to be sympathetic to and supportive of complainants.

[266] Mr. Sahota admitted that he had no personal knowledge of member-against-member harassment complaints made under the *Dispute Resolution and Discipline Policy* in which the person making the complaint or the person in power had an effect on the outcome. He said that this case is a classic example of the complainant receiving support that the respondent does not receive. In the context of a specific harassment complaint, Mr. Sahota admitted he had no personal knowledge or evidence that in the period between the making of a complaint and the conclusion of an internal appeal, complainants receive more support than do respondents. He also admitted to having no personal knowledge of the EC improperly interfering in a member-against-member complaint made under that policy, with the exception of Mr. Skinner's complaint. Mr. Sahota further agreed that he had no personal knowledge of the EC interfering during the period between a complaint being made and an internal appeal concluding.

[267] Concerning Mr. Sahota's testimony that it was unfair for PIPSC to appoint an investigator without obtaining the respondent's agreement, he said that the lack of an agreement would be an indicator of unfairness. It depends on the investigator's connection to PIPSC, the mandate, and the limits put on witnesses. When he was asked whether he had personal knowledge that the selection of the investigator was unfair, Mr. Sahota replied that he did not. He stated that he knows that in an investigation into workplace harassment at the CRA, the CRA appoints the external investigator, but he does not know if it pays the investigator. Mr. Sahota never represented a member who was the subject of an external investigation into harassment. He admitted that he was aware of the CRA's "Independent Third Party Review" process (ITPR) in its staffing policy and that according to it, the CRA selects the third party.

[268] Mr. Sahota said that in some cases, including this one, it is unfair that PIPSC determines the investigator's mandate. He said that Mr. Skinner and his representative told him that the mandate was made without consultation. Normally, in a member-against-member dispute, the investigation is done informally. The parties agree to an individual as the investigator or if they cannot, there is some kind of process, such as mediation. Mr. Sahota stated that he understands that PIPSC selects the investigator, which is an indicator of unfairness. As Mr. Sahota did not see the mandate, he stated that he does not know if it was appropriate.

[269] Mr. Sahota understood that Mr. Skinner wanted certain witnesses to be interviewed by the investigator, which was not permitted. Further, the investigator was paid by PIPSC and interacted with PIPSC's legal counsel, which created a perception of unfairness. Mr. Sahota knew that some witnesses were not interviewed. When it was suggested to him that the investigator did not call certain witnesses because she did not think their statements would be relevant, Mr. Sahota responded that she could not know that without interviewing them. When he was asked whether he knew that Mr. Skinner had provided a list of witnesses and what they would say to the investigator, Mr. Sahota said that Mr. Skinner would not have known what they would say in an interview. He maintained that the investigator is obliged to hear all witnesses proposed by a party. Mr. Sahota agreed that when an investigator does not interview a witness, it is either the investigator's choice or the witness's choice. When he was asked why he thought PIPSC had a say in the witnesses that the investigator would interview, Mr. Sahota replied that when Mr. Skinner questioned the investigator on her having omitted people on his list, she referred the questions back to PIPSC.

[270] Mr. Sahota said that Mr. Skinner told him that the EC prevented the investigator from speaking to witnesses. He could not have knowledge of other specific cases because of their confidential nature, but he stated that he knew that the hiring of investigators and the limits placed on them were controlled by the EC, which constituted interference. When indicators are taken together, it is an indication of improper interference. When it was put to him that the hiring of a third party for the ITPR is similar, Mr. Sahota replied that in disputes before the ITPR, PIPSC has made the same argument about the independence of the ITPR process.

[271] Mr. Sahota was referred to his testimony that PIPSC normally tinkers with preliminary reports because they are not given to both parties simultaneously, and this way, PIPSC has the opportunity to change them to obtain the result it wants. His only evidence that the parties do not receive the report at the same time is that Mr. Skinner told him so. He admitted that he had no other evidence to this effect. Mr. Sahota said that he had used the term “normally” because Mr. Welchner referred only to PIPSC and the ITPR, while Mr. Sahota has experience with other processes in which the EC had inserted itself. Mr. Sahota stated that in virtually every PIPSC internal process, the EC and senior PIPSC staff have a hand in and interfere.

[272] Concerning the application of discipline by the EC, Mr. Sahota said that in instances in which either party to a complaint has a connection to the EC, the fact that there is no clear policy on acceptable behaviour causes it to be unfair.

[273] The fact that the EC has the final authority to accept or reject the recommendation of the investigation report leaves open the possibility of bias.

[274] When he was shown PIPSC’s *Conflict of Interest Policy*, effective August 16, 2013 (Exhibit 2, tab 8), Mr. Sahota said that he was not aware of it. While it provides for making a complaint under the dispute-resolution process if a person breaches that policy, Mr. Sahota said that if a person did not self-declare, and others in the room were unaware, no complaint would be made. Even if there are grounds for a complaint, a complainant may not make one for political reasons, such as needing the vote of the person who breached that policy on another matter. When it was pointed out that the EC posts its minutes on PIPSC’s website, Mr. Sahota said conflict of interest normally occurs in closed sessions, so what is posted on the site is irrelevant. However, he

acknowledged that he did not know whether every conflict-of-interest issue at the EC is discussed in a closed session.

[275] When he was asked whether he was aware of the terms of the discipline imposed on Mr. Skinner, Mr. Sahota replied that while he had not seen the document, he understood that Mr. Skinner was asked to apologize, his duties were restricted, and his expense account was removed. The essence was that he was unable to carry out his regional director job.

[276] Mr. Sahota attended the June 7, 2014, meeting of the BC/Yukon Regional Council, at which Mr. Skinner made a presentation and stated that no finding of harassment or bad behaviour had been made against him.

[277] Mr. Sahota thought that the discipline was unfair because of its magnitude and because of how PIPSC had conducted itself. He thought that if a letter is considered discipline, then one would have been appropriate. He said that removing someone from office is a last resort.

[278] Mr. Sahota was referred to his testimony that the EC interfered with the way the BC/Yukon Regional Executive did business because of its attitude toward Mr. Skinner. Mr. Sahota said that that executive questioned why Mr. Hindle was there to observe, which was never explained. It was not normal practice for an EC member to attend BC/Yukon Regional Executive meetings. That, in itself, was interference. Mr. Hindle took notes and later participated in the EC's discussion on Mr. Skinner. There was a combination of attacks on both the BC/Yukon Regional Executive and Mr. Skinner. The appointment of Mr. Hindle was partly a result of the EC's hate for Mr. Skinner. His appointment was its attempt to interfere with the activities of the BC/Yukon Regional Executive and to freeze its bank account.

[279] Mr. Sahota said that the EC improperly interfered in selections to BOD committees and to the BOD as a whole. Normally, nominees from the BC Region were on the BC/Yukon Regional Executive. In February 2014, individuals nominated to participate on BOD committees were rejected. That change to past practice was interference. In Mr. Sahota's view, it was changed because the EC hated Mr Skinner, his activities on the BOD, and BC/Yukon Regional Executive's support of him.

[280] According to Mr. Sahota, the past practice in the BC/Yukon region was that individuals would apply to sit on a particular BOD committee. The BC/Yukon Regional Executive discussed which of its members would be supported by the regional director for the nomination. Everybody could apply, but the regional director was expected to support the nominee. That was the only way the Regional Executive could receive information from the PIPSC level. Furthermore, BC/Yukon region by-laws provided that members of the BC/Yukon Regional Executive appointed to BOD committees could be compelled to file reports on committee deliberations, while that was not required of nominees who were not Regional Executive members. The BOD did not require them to file reports.

[281] It was put to Mr. Sahota that his assertion that PIPSC's BC Region did not receive all the appointments recommended by Mr. Skinner because the EC hated him was based not on knowledge but on speculation. Mr. Sahota replied that many unusual events occurred. Mr. Skinner carried out different activities and made reports to the BOD, some of which were detrimental to the BOD and PIPSC staff, such as the report on the changes to pay and the pension plan.

[282] Mr. Sahota was referred to the minutes of the BOD meeting of February 21 and 22, 2014 (Exhibit 7). In particular, he was referred to item 4.8 on page 7 indicating that a motion to move the discussion on the selection of 2014 committee memberships to closed session was defeated. It was put to him that the minutes were public, that they had been posted on PIPSC's website, and that someone who had been present or who had seen the minutes could make a complaint of misconduct if the person thought that someone in a conflict of interest had still voted on the committee selection. Mr. Sahota replied first that some minutes reflect the decision and not the debate. He then added that since declaring a conflict of interest is not mandatory, how would the BOD know if an EC member is in a conflict of interest if the member did not declare one? Mr. Sahota said that if he had knowledge of a conflict of interest, why would he make a complaint, given that the issue would go to the same decision makers?

6. Mr. Corbett

[283] Mr. Corbett's involvement with PIPSC was as an elected vice-president from 1998 and as the president from 2009 to 2013.

[284] He stated that PIPSC imposes discipline according to the *Dispute Resolution and Discipline Policy* in the regions. Mr. Corbett has seen some cases in which punishment for an activity was not necessarily the same in similar circumstances. In some cases, members were expelled from the union, while in others, there was leniency. There was no standard to apply. PIPSC is a political organization, and if it had a discipline policy open to the political system, the danger was that discipline could be politicized. Discipline that includes politicians and members with ties to politicians is open to political influence.

[285] He stated that PIPSC's president occupies a powerful position. He cited decision making, directing staff, and signing cheques as examples of that power. The president sits on PIPSC's Management Committee. If the president brought something controversial to the EC, and it did not go forward, then the president could bring it to the BOD. That is the nature of the power.

[286] He testified that the "Panel of Peers" was a new mechanism included in the new 2014 *Dispute Resolution and Discipline Policy* (Exhibit 2, tab 5) that was not in force at the time of the incidents at issue. It was created because conflicts of interest had arisen out of complaints between EC members. Mr. Corbett said that the Panel of Peers is still open to influence. For example, were one of his supporters appointed to it, he or she could find it difficult to be neutral.

[287] Mr. Corbett referred to his case, in which he was asked to appear before a Panel of Peers because of a complaint with another EC member. The panel was trying to determine the circumstances of the matter. One of its members told Mr. Corbett that the panel recommended that the case be dropped, but PIPSC's legal section had instructed it that it should proceed. At the time, the head of the legal section reported to the president. When Mr. Corbett was president, the general counsel kept him apprised of the Panel of Peers' cases. It is not unheard of that the EC does not follow the recommendation of legal counsel. A dispute between legal counsel and the president would go to the BOD.

[288] When he was asked if there was any document or policy at PIPSC to assist stewards with harassment cases, Mr. Corbett replied that there was no standard that defined a response to them. An individual could face expulsion or just a letter, depending on his or her political involvement. When he was asked if when making a

decision, the EC took into account additional information or mitigating circumstances other than the investigation report, Mr. Corbett said that in his experience, the overarching consideration is whether one is a political adversary of an EC member.

[289] Mr. Corbett declared a conflict of interest in Mr. Skinner's case because he felt that so many people on the EC were not neutral that he did not want to be a part of it. He also felt that some of them did not understand conflict of interest. When he was asked if his declaration of a conflict of interest validated PIPSC's *Conflict of Interest Policy*, Mr. Corbett replied that he did not need the policy to know what a conflict of interest is. If someone has an interest in an outcome, or if that person feels that a fair outcome is not possible no matter what he or she says, then the person does not remain.

[290] Mr. Corbett did not think that there would be a fair outcome in Mr. Skinner's case. He did not think that Mr. Skinner would receive a fair hearing because people on the EC hated him. Mr. Corbett worked with those people, and EC members called Mr. Skinner names and talked about him disrespectfully. Ms. Daviau, Ms. Bittman, and Ms. Friesen had power in the EC and could move toward getting what they wanted. Mr. Corbett did not know that Ms. Friesen had made complaints against Mr. Skinner but he was not surprised, because she made many complaints.

[291] Mr. Corbett was asked if he knew of situations in which PIPSC's legal section had recommended that an investigation proceed and the EC then decided that there would not be one. He referred to a situation in which several members complained that an EC member had acted inappropriately in a hospitality suite. Mr. Corbett said that he could do nothing without a formal process. He recommended an investigator. PIPSC's legal section agreed with the recommendation and hired the individual. The investigation report went to the EC. Mr. Corbett was one of four people in the room, of whom two were politically connected to the respondent. There were arguments made in the EC that were not part of the report. The EC argued that the person who had misbehaved had been harassed. The investigation report was quashed. As far as Mr. Corbett was aware, PIPSC never hired that investigator again. While there could be many reasons for it, one of the arguments made by the EC to quash the report was that the investigator had not done a good job. He said that in anybody's case, the EC can quash a report that it does not like.

[292] Mr. Corbett said that PIPSC did not have a progressive discipline policy.

[293] Concerning harassment complaints, Mr. Corbett said that during his term as president and during those of three of his predecessors, there were not many harassment complaints. They began in the latter stages of his presidency. Most were political and were used as weapons. It was a tactic to attack people so that they would lose credibility in the eyes of the members, thus providing the person making the complaint with a better chance to move up the political ladder. Complaints often contained false information. Mr. Corbett referred to complaints made against him by two EC members that were dropped after two years.

[294] Mr. Corbett was asked about the two 2012 letters, which he had addressed to Mr. Skinner (Exhibit 2, tabs 57 and 58) and were about the complaints made by Messrs. Auguste and Jones in 2012. Concerning the letter (at tab 58) on Mr. Jones's complaint, Mr. Corbett stated that Mr. Jones and Mr. Skinner did not like one another and that they both wanted to move forward. Mr. Corbett worked out a meeting, but it did not take place. He testified that Mr. Skinner was rough around the edges as a director and that he needed guidance. Mr. Corbett asserted that he never considered the letter in any way disciplinary; if he had, he would have stated as much.

[295] Concerning Mr. Corbett's letter mentioning Mr. Auguste's complaint (at tab 57), Mr. Corbett stated that he did not consider it disciplinary. His role was to bring people along as directors and to be a mentor. He often wrote to members about attitude and how they should act. The letters were a way to make them aware of their role and how PIPSC worked. His letter to Mr. Skinner was meant in that spirit.

[296] To be an effective steward, one has to be stern and hold one's own in an argument before the employer. Mr. Corbett saw much of that in BOD meetings, in which people were stern, bordering on aggressive, and meetings could be volatile. When people move to a boardroom environment with members, people bring their work baggage to meetings. At BOD meetings, people yelled at each other for practical or political reasons. The BOD became toxic at some points.

[297] Concerning the allegation that Mr. Skinner had called Ms. Friesen "full of s***" and "a hypocrite", Mr. Corbett said that he was present during the meeting in question and that he ordered that a break be taken. He saw Mr. Skinner and Ms. Friesen speaking and simply thought it was another day at the BOD with the usual bad

behaviour. He thought that their discussion was off the record. Mr. Corbett added that sometimes, there was equally bad behaviour on the record.

[298] Mr. Corbett and other EC members were aware of Ms. Friesen's work in a psychiatric centre in the correctional service. She described her work to them. She had alleged that Mr. Corbett had abused cocaine, which she knew because she worked with cocaine addicts. Mr. Corbett had symptoms from a renal disease that Ms. Friesen told the members were symptoms of cocaine addiction. He alleged that she did that for political reasons, to discredit him with the members.

[299] Concerning sensitivity training, Mr. Corbett stated that he does not know if PIPSC uses it currently, but it did not use it when he was the president. Early in his presidency, a complaint was made against a steward. Mr. Corbett wrote him a letter, stating that he would not be renewed unless he took sensitivity training. The type of training was not defined; he could have taken any kind. Mr. Corbett said that he would have never sent anyone to a psychologist for sensitivity training because that would presume a diagnosis on his part.

[300] Mr. Corbett was referred to the minutes of the EC meeting of July 3, 2013 (Exhibit 2, tab 20, Appendix A, fourth paragraph), and the comment that B.C. members were afraid to go against Mr. Skinner and that they "fear his reprimand". Mr. Corbett said that that must have been stated by an EC member, because when he was on the EC, members said that kind of thing. One member could have complained, or 10. Mr. Corbett did not necessarily agree with that statement because it could have been said about him, Ms. Daviau, Ms. Friesen, or anyone. When Mr. Corbett was president, he did not receive complaints about Mr. Skinner from members. Furthermore, a director does not have the power to reprimand.

[301] Mr. Corbett was then referred to an email from Ms. Friesen (Exhibit 2, tab 29, page 22), in which she wrote, "Gender discrimination appears to be a growing trend in PIPSC." Mr. Corbett recalled seeing it. He stated that Ms. Friesen was "pro-woman" and that in his view, she was anti-male. The context of her email did not speak to the issue as he understood it. His position at the time was that PIPSC needed fewer vice-presidents, for financial and operational reasons. He said that the email indicated how Ms. Friesen operated to get her point across.

[302] Mr. Welchner declined to cross-examine Mr. Corbett.

7. Ms. Bittman

a. Examination-in-chief

[303] Ms. Bittman began her PIPSC involvement as a steward in 1999. She was on the AFS national executive from 2006 to 2009, president of a subgroup at the Toronto West CRA office for three years, and a PIPSC full-time vice-president from January 2010.

[304] Ms. Bittman was summonsed to testify by Mr. Skinner. She immediately advised PIPSC of the summons. Initially, she received an email from Mr. Ranger, PIPSC's legal counsel, in which he offered to provide documents. There was a telephone call with Mr. Welchner to discuss PIPSC's strategy. Ms. Bittman received a book of documents on Monday, April 10, 2017. She returned them unopened to Mr. Ranger on the Wednesday and said that she did not want to read them.

[305] PIPSC had made a complaint against Ms. Bittman. She did not want to testify because she was a member of the BOD and knew that she was already walking a fine line because, in her words, "If you're a vice-president a long time, you're part of the internal complaint system." Ms. Bittman said that answering questions honestly would potentially hurt the Institute.

[306] On April 13, 2017, she received a letter from Mr. Gillis (Exhibit 8) reminding her of her fiduciary duties under the legislation and offering her the assistance of PIPSC counsel. She stated that the letter "petrified" her. It was a thinly veiled threat to remind her of her fiduciary duty of honesty and loyalty and to allege that she was not cooperating with PIPSC. Ms. Bittman stated that she was "extremely scared" of what Mr. Gillis tried and was willing to do. He had made a complaint against her, which would have had her removed as vice-president and could have cost her both her CRA job and her security clearance. His complaint alleged a breach of confidentiality, which was unfounded. She said that it cost her $50 000 in legal fees, of which $30 000 remained to be paid. Therefore, she made a complaint with the Board but was intimidated by PIPSC into withdrawing it. After receiving Mr. Gillis's letter, she feared that PIPSC would come after her again.

[307] Ms. Bittman said that Mr. Gillis's letter was not factually correct. She referred to the second paragraph, where he wrote that it was "usual practice" to remind directors of their fiduciary duty. She said that that was not the usual practice. Ms. Bittman had

testified before the Board in another case and did not receive such a letter, was not offered the chance to speak with anyone to prepare her testimony, and was not offered any documents. PIPSC knew that she was preparing by diligently by reviewing emails, policies, EC and BOD minutes, complaints, and counter-complaints.

[308] As with the previous witnesses, Ms. Bittman testified that PIPSC does not have a policy or code of conduct concerning bad behaviour. It is all over the map. If someone makes a complaint, sometimes it goes forward, and sometimes it does not. Concerning the BOD's conduct, mediators had been brought in to fix the relationships on the BOD. The BOD tried several times to implement a code of conduct that specified consequences, but the motions to do it were defeated. The BOD's behaviour is unprofessional. In October 2014, Ms. Daviau sent an email about respectful communication, but people forget.

[309] According to Ms. Bittman, guests are infrequent at BOD meetings. Guests could include outside legal counsel or a member or steward actively involved in a file. Any PIPSC member could act as an observer, except during closed discussions. It has been fairly public that the BOD is dysfunctional, but it behaves somewhat better when observers are present.

[310] The behaviour of the BOD is not the same as what it expects of its officials who represent members. When Ms. Bittman was the president of a subgroup at the Toronto West CRA office, she looked up to the BOD, the president, and the vice-presidents. She had been excited to invite the president and vice-presidents to the Toronto West AGM, and the members felt proud at their presence. If she were still president of that subgroup, she would not invite any BOD members to her meetings. Those members are not disciplined for bad behaviour unless a complaint is made.

[311] Ms. Bittman knew Ms. Friesen, who was a part-time vice-president. She was a psychologist at the Correctional Service of Canada and occasionally told stories about her work. They became good friends. Ms. Bittman was shown Ms. Friesen's complaint. She said that the phrase "full of s***" had been used several times at BOD meetings but that "hypocrite" had not been used. The F-word was used, as were many others. That was how people generally treated each other.

[312] Ms. Bittman was shown the final investigation report of the Friesen complaint (Exhibit 2, tab 30), in which Ms. Friesen alleges that Mr. Skinner told her that she was

"full of s***". She was shown page 4, which refers to Mr. Skinner's counter-complaint and his allegation that at the BOD meeting, Ms. Friesen had screamed at him that he ran a "campaign of hate". When she was asked if that was normal behaviour for the BOD, Ms. Bittman replied that she would not say that it was normal, but it was not usual. She said that Mr. Skinner did not contravene a PIPSC policy against bad behaviour because there was no such policy.

[313] She stated that before Ms. Friesen's complaint was made, Mr. Skinner did not have a disciplinary record. No complaints from the BC/Yukon region had been received about him. Ms. Bittman knew him as they had worked together on the AFS executive, to which she had been appointed from 2006 to 2009, and they had worked in different roles. She was referred to the minutes of the EC meeting of July 3, 2013 (Exhibit 2, tab 20), and to the comment about Mr. Skinner in the sixth paragraph, which stated that his "… past history shows … lack of cooperation and refusal for mediation." She said that that was not consistent with her knowledge and that it was not factually true. In 2012, Mr. Skinner was a new director, known for his strong, effective representation of members and for being forthright and direct — a little too direct, at times. The EC never asked him to enter into mediation in those situations. In the Mr. Auguste situation, Mr. Skinner was just given a letter reminding him to be a little more careful.

[314] Concerning Mr. Jones, the EC determined it would be a waste of time to go to investigation, as it was a personal situation gone bad that had become a personal vendetta. The EC directed Mr. Corbett to meet with Mr. Skinner and Mr. Jones to tell them both to smarten up. No mediation was suggested, and none was refused.

[315] The EC minutes are dated July 3, 2013. The investigation into Mr. Skinner began in November 2013. Ms. Bittman said that at paragraph 4 of the minutes, the EC recognizes the fact that an investigation is pointless. It appears that the EC felt that it had to show leadership in that harassment would not be tolerated. The minutes seem to indicate that Mr. Skinner would be set out as an example. To Ms. Bittman, it did not reflect well on the EC, as simply having to do things was not a sound basis for a decision.

[316] At the time the complaints were made against Mr. Skinner, the EC was in disarray. Ms. Bittman said that it was the second-worst time since she became a vice-president. She recalled that Ms. Daviau stated that people in B.C. were afraid to go

against Mr. Skinner and that she had received emails and calls about it. Ms. Bittman said that the EC accepted that. She did not see any emails supporting the complaints. Things were not going well for Mr. Corbett. Relations in the EC had completely broken down. Normally, it would have dealt with the complaints as it had for the situations involving Mr. Auguste and Mr. Jones.

[317] Ms. Bittman said that on June 10, 2014, she, Ms. Daviau, and Ms. Friesen met with Ms. Roy, without Mr. Corbett's knowledge. They made serious allegations of harassment against Mr. Corbett to Ms. Roy but did not want to make a formal complaint. They asked Ms. Roy to do something to stop it. She got back to them later, stating that she could not and would not do anything. Ms. Bittman that felt nothing could be done.

[318] Ms. Bittman recalled that in November 2012, multiple complaints were made. Mr. Corbett wrote an email to EC members requesting that he be allowed to deal with them in some way other than an investigation. That option was not available in July 2013 because in her words, the EC had "blown apart."

[319] Ms. Bittman was asked how Mr. Skinner being named Steward of the Year and Executive of the Year squared with the complaints of members being afraid of going against him. She replied that the Steward of the Year award is based on the recommendation of the candidate's peer group. There would have been other nominations, and the BC/Yukon Regional Executive would have determined that Mr. Skinner was the best candidate.

[320] Ms. Bittman said that the investigator would have had to use her own benchmark as to what constituted bad behaviour because PIPSC did not have a policy defining it.

[321] When she was asked to comment on the merits of Ms. Friesen's complaint, Ms. Bittman said that it was weak. In normal circumstances, it would not have gone forward; nor would have Mr. Skinner's counter-complaint, but the circumstances were not normal. There was no other way to solve it. EC members were making other allegations against Mr. Skinner. Ms. Bittman did not recall whether anyone asked PIPSC's legal section to investigate that complaint or to follow up on it.

[322] Ms. Bittman was referred to Ms. Mertler's harassment complaint and the related final investigation report. Ms. Mertler was on the BC/Yukon Regional Executive. She said that at a BC Regional Council meeting, the members of the B.C. executive are the highest elected officials. They are on show and set an example. As the regional director, Mr. Skinner did not like what he saw. Ms. Bittman said that she probably would have said something to Ms. Mertler but that she did not know if she used the F-word. Ms. Bittman was unaware that PIPSC issued an apology to Ms. Mertler. When she was asked why PIPSC disciplined Mr. Skinner and directed him to write a letter of apology to Ms. Mertler, Ms. Bittman said that the EC always acted on the investigation report. The investigator found that there was no harassment, but Mr. Skinner's behaviour had been inappropriate. Normally, if there is no finding of harassment, there is no discipline.

[323] Concerning Ms. Denton's additional allegations (Exhibit 2, tab 48), Ms. Bittman said that they did not appear to be a complaint and that the document containing them read as if someone had taken notes. When she was asked if the EC had approved the additional allegations, she said that she did not recall ever seeing the document or approving it and that she would have to check the meeting minutes.

[324] Ms. Bittman said that at a formal hospitality suite, when the day's work was done, members would be encouraged to attend, network, and socialize. She used the term "formal" because at large PIPSC events, a formal hospitality room would be booked, with private rooms booked for delegates. When Ms. Bittman thinks of a hospitality suite, she thinks of a formal suite.

[325] When Ms. Bittman read Ms. Denton's additional allegations, at the third paragraph, she interpreted it as involving the formal hospitality suite. It seemed to her that there had been no formal hospitality suite and that Mr. Skinner would not have had everyone in his room.

[326] Ms. Bittman said that PIPSC's legal section has an oversight role concerning investigations and disciplinary action. Pursuant to the 2009 *Dispute Resolution and Discipline Policy* in effect at the time, complaints were made with the general counsel, who could write a briefing note to the EC with her recommendations. The EC would render a decision. If the complaint was frivolous, vexatious, or without merit, or if it

had merit, it could be investigated. The *Dispute Resolution and Discipline Policy* stated that individuals were encouraged to settle complaints personally.

[327] During discussions concerning Mr. Skinner's conduct, PIPSC's legal counsel attended the meetings, and either Ms. Roy or Mr. Ranger attended. It was the same for all dispute-resolution cases. Ms. Roy would have known that the only charge that remained in the Denton complaint was the retaliation charge because according to policy, she would have seen the preliminary report and the submissions from the complainant and respondent. It would have been impossible for her not to have known about the findings.

[328] Ms. Bittman testified that the Denton final report raised some questions about the findings. The investigator had the responsibility to ensure that she had all the evidence to reach an unequivocal conclusion. Perhaps PIPSC's legal section or the EC should have caught it at the time; Ms. Bittman saw it just as she testified. The general counsel has the overall responsibility as the carrier of the complaint to ensure that everything is done correctly.

[329] Ms. Bittman was referred to page 62 of the Denton final report, where the investigator wrote, "Mr. Skinner also [*sic*] aware that PIPSC Legal had not put in any measures to separate the parties, but instead encouraged business as usual and a respectful tone." She was also referred to Ms. Aschacher's correspondence with Ms. Roy (Exhibit 1, tab 12), in which she asked what "protocol" the BC/Yukon Regional Executive should follow at its next meeting. Ms. Bittman said that Ms. Roy's response was not helpful. PIPSC's legal section should have provided meaningful assistance, or if not, it should have asked the EC to provide it. Ms. Aschacher was seeking guidance from PIPSC.

[330] When she was shown the Denton investigation report, Ms. Bittman said that the EC should have known about it. She stated that she thought that it was a "game changer" in terms of what the EC received and did not know why the EC had not been privy to it. She had never seen it before.

[331] Concerning the Denton final report and the investigator's statement that on balance, she found that Mr. Skinner had excluded Ms. Denton in a public manner in an effort to send a message that there were consequences for making a complaint, Ms. Bittman said that the investigator was referring to Mr. Skinner having excluded

Ms. Denton from the hospitality suite. Based on the BC/Yukon Regional Executive minutes, there was no formal hospitality suite. It was clear that the region did not book one and that only Mr. Skinner's room had been available. Ms. Bittman has attended PIPSC social functions, as well as BOD social functions, but lately has been invited to fewer BOD functions. At the 2017 PIPSC AGM, Ms. Daviau had a hospitality suite, and Ms. Bittman and certain other BOD members were not invited there. These things do not just occur at the regional level but seem to be an acceptable practice further up the hierarchy.

[332] Ms. Bittman commented favourably on the change to the guidelines for investigative standards effective March 1, 2016, which state that witness statements are to be provided to witnesses for signature and then attached to preliminary reports. Harassment is serious and has a serious impact, so this is important to the process.

[333] Ms. Bittman was asked to evaluate the procedural fairness of the PIPSC complaint process during the time involving Mr. Skinner's complaints. She said that it was not good, from start to finish. In the intake process, some weak complaints went forward, while others, with serious issues, did not. On numerous occasions, the EC directed the general counsel to never again use a particular investigator. There were many EC meetings at which it was stated that more preliminary fact-finding had to be done before deciding whether to investigate a complaint. There were no standards. Some investigation reports contained recommendations. In others, PIPSC's legal section directed the investigator not to include them because it would tie the EC's hands. Some investigation reports contained witness statements; others did not. At the time, the EC was the decision maker, and the BOD heard appeals. Both were political in nature. When the BOD was the appeal body, there seemed to be a lack of consistency on the issue of conflict of interest. At the time relevant to Mr. Skinner's complaints, politics entered into the *Harassment Policy* in terms of how decisions were rendered and whether members of the BOD did or did not declare a conflict of interest.

[334] PIPSC does not have a progressive discipline policy. If the EC had to determine the severity of discipline to be imposed, usually, legal counsel provided other instances of misconduct in which discipline was imposed. The CRA has a detailed grid specifying discipline.

[335] Concerning the former appeal process at the BOD, it could determine only whether the EC had acted in a manner that was arbitrary, discriminatory, or in bad faith. Under the new *Dispute Resolution and Discipline Policy* effective February 1, 2014, the scope of the appeal became up to the neutral third party. The issue is that if it is truly an appeal, all the evidence may be looked at.

b. Cross-examination

[336] Mr. Welchner prefaced his cross-examination by stating PIPSC's position that Ms. Bittman had a grudge against it that coloured her testimony.

[337] She was referred to her testimony that PIPSC had made a complaint against her for a breach of confidentiality under the 2014 *Dispute Resolution and Discipline Policy*. The Panel of Peers, which had replaced the EC as the first stage of the process, accepted the investigation's conclusion that there had been no breach of confidentiality, but it made an additional comment that it felt that Ms. Bittman had acted in bad faith because she and her legal counsel had defended her too aggressively. Ms. Bittman said that that comment was inappropriate and that it went beyond the scope of the panel's mandate. It was a serious complaint with even more serious adverse consequences, namely, her potential removal from her national vice-president salaried position and, more seriously, the loss of her government high-level security status, which would have meant the loss of her CRA position.

[338] Ms. Bittman disagreed with Mr. Welchner's characterization that the investigator found that PIPSC's position on breach of confidentiality in the complaint was in accordance with its usual practice but that the duty of confidentiality was not a well-defined concept.

[339] When she was asked if she was still upset with the complaint, Ms. Bittman said it was another example of a complaint poorly handled by PIPSC. There was no procedural fairness, and it lacked natural justice. Given all those violations, it was surprising that the investigator was able to act independently and reach a correct conclusion. The only reason the investigator did was that Ms. Bittman had retained counsel, as the allegations in the complaint were untrue and highly misleading.

[340] Concerning her testimony that she sought the reimbursement of $50 000 in legal fees, Ms. Bittman acknowledged that the BOD had been tasked with determining

the proportion of the invoice that was related to defending the breach-of-confidentiality complaint. It determined that she would be reimbursed $30 000. When she was asked how she felt about being out of pocket $20 000, she said that she was not happy but that the bigger impact was on the BOD. That complaint was made within two months of the election of the BOD (the term began on January 1, 2016).

[341] When PIPSC decided not to reimburse all of Ms. Bittman's legal expenses, she made a complaint to the Board. She said that it had more to do with lack of procedural fairness, beginning with the intake of the complaint. One of the remedies requested was a reimbursement of $20 000. This was the complaint she had earlier testified to having been intimidated into withdrawing. Ms. Bittman largely agreed with Mr. Welchner's understanding that she withdrew her complaint after a BOD meeting, since her complaint would have invoked PIPSC's policy relating to members filing complaints to outside bodies (Exhibit 9). Ms. Bittman said that at that BOD meeting, Ms. Roy said that Ms. Bittman's complaint included allegations against Mr. Gillis and Ms. Roy, which were new. She disputed that statement. The inference was that Ms. Bittman had not exhausted all internal recourse. She pointed out that she had asked for mediation throughout the process. She was open to a less-adversarial resolution. Mediation was never offered. She said that she had been under attack by someone at a high level at PIPSC since February 2016 and that she was not up for a fight and for spending more money on legal fees. She was ready to turn the page. The complaint destroyed relationships at the BOD, which continues to be a toxic environment.

[342] Ms. Bittman specified that since she was under attack, the complaint made against her was very serious. At its April 9, 2016, meeting, the BOD imposed sanctions on her and on other respondents. They were never provided the right to give their side of the story before the sanctions were imposed. Ms. Daviau had barely spoken to her since the latter part of April 2016. The BOD mandated a third party to work with it to improve relations. The motion had two parts. First, for a longer-term solution, the third party would make recommendations. Second, there would be an immediate intervention at the BOD. The second part was never done. The third party made 140 recommendations. One of the key recommendations was that the complaint made against Ms. Bittman required mediation; the investigation should be stopped and should never have begun.

[343] For Ms. Bittman, everything changed at the BOD. It was extremely toxic. She spent evenings and weekends defending herself. It took one year of her life. Had she continued the battle, it would have affected the BOD and prevented it from making decisions in the interests of members. As long as there was fighting, she could not turn the page.

[344] Ms. Bittman stated that her statement that she was intimidated into withdrawing her complaint was largely founded on the way PIPSC dealt with the original complaint against her; no holds were barred, and sanctions were imposed without her having the opportunity to respond. There was no fair play; issues were not responded to, and she did not think she would receive a fair shake. She felt intimidated because she felt that the outcome would be predetermined. And she wanted to move forward and put the focus where it belonged.

[345] When she was asked if a special committee was convened under the Institute's *Policy Relating to Members and Complaints to Outside Bodies* to address her complaint to an outside body, Ms. Bittman said that at the January 2017 BOD meeting, she was told that PIPSC would invoke that policy. There were 10 days to form the committee; because she withdrew her complaint, she was notified that PIPSC would take no further action.

[346] Ms. Bittman disagreed with Mr. Welchner's statement that she had made six complaints under the *Dispute Resolution and Discipline Policy* that were either withdrawn or determined unfounded. She said that none of her complaints was determined unfounded because they were summarily dismissed. She withdrew only one complaint.

[347] Ms. Bittman said that she was disappointed about being invited to fewer PIPSC social functions because it meant that things were not improving at the BOD and that none of the steps that had to be taken was being taken. Concerning her testimony that Ms. Daviau did not specifically invite her to the president's hospitality suite at PIPSC's AGM, Ms. Bittman agreed that it was largely true that members do not need specific invitations to attend the suite at an AGM. However, she stated that one does not go where one is not welcome, and her understanding was that most BOD members had been specifically invited. Ms. Bittman was not turned away from Ms. Daviau's hospitality suite but did not attend it.

[348] It was put to Ms. Bittman that unlike in the present case, Ms. Daviau did not tell the members that they were not permitted to attend her hospitality suite. She replied that she could not comment on the comparison as she was not in B.C.; all she had was the investigation report and the BC/Yukon Regional Executive meeting minutes. Ms. Daviau did not tell Ms. Bittman not to attend her hospitality suite, but she specifically invited other BOD members who were known to be her friends.

[349] With respect to having recently made a harassment complaint against Ms. Daviau concerning remarks she made at the January 2017 BOD meeting, Ms. Bittman said that it was only one of the allegations that she had made. It was a last-resort complaint and had been identified as such. Ms. Bittman repeatedly requested mediation so that Ms. Daviau could find a way forward. Ms. Daviau refused.

[350] Ms. Bittman was questioned on her belief that even though she was a witness in these proceedings, PIPSC should have paid legal fees, so that she could have had legal representation. She replied that normally, there would be no situation in which a lawyer was necessary. But in this case, she was being challenged about her fiduciary duty and supposedly did not cooperate with PIPSC, which raised questions about PIPSC. In her view, PIPSC is not the president's office or the BOD; it is the members. She knew that she would be questioned by Mr. Skinner's representative. She has a fiduciary duty of loyalty to PIPSC but also a responsibility to answer questions honestly. She has very good reason because of her experience with complaints made against her under the former dispute-resolution system, which did not work well.

[351] Ms. Bittman said that she was an "accidental vice-president". She ran because of the complaint she made, and she did not feel that discipline was appropriate. Within one month of becoming a vice-president, a complaint was made about three BOD members. As the EC had declared a conflict of interest, the BOD acted as the decision maker. She was horrified that some BOD members came to the meeting without having read the investigation report and appeared not to care about it. According to her, they were going to vote based on how they felt about the particular BOD member. Ms. Bittman said that another vice-president made a harassment complaint against her because while she was the acting president, she disallowed expenses on a claim. The complaint was clearly political. The travel policy had not been followed. It provided that if a disagreement arose with a reimbursement, the appeal would be to the Finance Committee. A harassment complaint was also made against Mr. Burns, who had also

disallowed an expense claim. The investigator found Ms. Bittman guilty of harassment, but not Mr. Burns. He and other vice-presidents wrote to the BOD, referring to flaws in the investigation. Ultimately, the BOD determined not to use that investigator again.

[352] Ms. Bittman knew that if she were asked questions on the former discipline system and that if she answered honestly, she would state that there were significant problems with it. After receiving the letter from Mr. Gillis, she wrote an email, as she was concerned about the duty of honesty and the fiduciary duty. She had been an EC member since 2010 and had been a decision maker for a long time. She saw things that she wished she had not seen.

[353] Ms. Bittman agreed that to her knowledge, PIPSC has never paid the legal fees of a member who was a witness in a proceeding and wanted legal representation. She said that there was a policy dealing with legal representation services that left open a situation in which it made sense to pay fees in the appropriate circumstances; it was not a prohibition but was discretionary. According to her, Mr. Gillis did not have the authority to authorize such legal expenses.

[354] Ms. Bittman was referred to seven letters Ms. Daviau had sent to her throughout 2016 that took exception to her behaviour in the workplace. Ms. Bittman said that she returned the seven letters. The first one, dated April 19, 2016, raised issues of poor performance and of stealing time from PIPSC. Had those things occurred, Ms. Bittman would have expected Ms. Daviau to speak to her.

[355] It was put to Ms. Bittman that the previous year, Ms. Daviau had raved about her at constituent-body events. Ms. Bittman said that she had been helping Ms. Daviau, who had assigned her the most important files. In Ms. Bittman's view, things do not change that quickly.

[356] Ms. Bittman said that she was in complete disbelief and shock at the first letter. When she received the second one, it was incomprehensible to her that she had received it. She had just returned from Victoria, where she had gone suddenly because of a medical emergency concerning an immediate family member. Ms. Friesen spoke to Ms. Daviau. She told her about the situation and expressed her opinion that PIPSC should accommodate Ms. Bittman. The day Ms. Bittman returned to the office with the crisis still outstanding, Ms. Daviau hand-delivered the second letter of May 31, 2016. Then it became a running joke.

[357] Ms. Bittman was on the EC when it made its decision about Mr. Skinner. It was put to her that according to the EC meeting minutes, she did not raise the concerns about Mr. Skinner's treatment that she raised in her testimony in-chief. She replied that the EC decided to refer it to investigation because there were so many complaints. There was no other way to deal with it. The investigator was supposed to be independent. Ms. Bittman thought that she would be in a position to receive and review the investigation report impartially and objectively. When she spoke with Mr. Welchner before testifying, she told him that when she read the minutes, she was horrified by the contents, and that it did not make the EC look too good. At the hearing, Ms. Bittman agreed with Mr. Welchner that she had not been horrified at the time, or she would have spoken up.

[358] Ms. Bittman was asked whether it was possible that subconsciously, her being upset at PIPSC affected her current view of PIPSC's actions concerning Mr. Skinner in a way that was significantly different from her view at the time she actively considered the complaint against him. She replied that anything is possible but that she is resilient and gets over things quickly. When she read the complaint and counter-complaint, the investigation report, and the meeting minutes of June 18 and July 3, 2013, looking back, there was certainly some bias. Nobody likes to be part of something that when it is looked back on, it could be said that maybe, things should not have been done as they were. Sending the complaint to investigation was, in a way, the only way to deal with it, but in normal circumstances, it would have been dealt with by other means.

[359] Concerning Ms. Bittman's testimony that if she were the subgroup president, she would not invite any BOD member to speak, it was put to her that not everyone shares her view and that Ms. Daviau is invited to speak across the country. She replied that members are insulated and that many do not know what is going on. Her comments were from the point of view that the leader of PIPSC cannot get along better and work collectively, in the best interest of the members.

[360] Ms. Bittman was referred to her testimony that she was a witness in Mr. Gillis's reconsideration request before the Board. She was then referred to the allegations Mr. Skinner made against her personally in his complaint. Ms. Bittman said that she questioned PIPSC as to why she was not called as a witness to defend herself, since she thought that PIPSC would call her to testify. She acknowledged that in Mr. Gillis's reconsideration request case, he had not suggested that Ms. Bittman had done

anything wrong. Ms. Bittman agreed that given her support of Mr. Gillis's case, it would not have made sense for PIPSC or its counsel to meet with her in advance and share PIPSC's strategy. She added that since in Mr. Skinner's case, she received a letter from PIPSC reminding her of her fiduciary duty, if such a letter is customary, she would have expected the one in Mr. Gillis's case. Thus, she concluded that such a letter is not customary.

[361] Concerning her testimony that PIPSC does not have a bad-behaviour policy, Ms. Bittman was referred to PIPSC's *Harassment Policy*, which deals with bad behaviour. She replied that there is a difference between simple bad behaviour and bad behaviour that rises to the level of harassment and stated that the BOD has not developed such a policy to hold itself accountable. Such a policy could resolve many issues without having to carry out investigations. Ms. Bittman admitted to making complaints but only as a last resort in egregious circumstances. Had another mechanism been in place, many of those complaints could have been dealt with in another way. Ms. Bittman thinks that the *Harassment Policy* deals only with really bad behaviour, while merely inappropriate behaviour falls outside its scope.

[362] Ms. Bittman was referred to her testimony in examination-in-chief, when she was asked if PIPSC had a bad-behaviour policy. She had replied that it did not. She was referred to PIPSC By-law 24.1.1 of the *Dispute Resolution and Discipline Policy*, which sets out misconduct that may be subject to discipline. She thought that she was being asked about a policy to deal with issues with minimal consequences, not issues leading to a suspension or removal from office. She had queried whether PIPSC had a policy on bad behaviour that permitted finding a resolution without engaging the dispute-resolution process.

[363] Concerning whether the dispute-resolution process was complaint-driven, Ms. Bittman said that the BOD was told that because of the *Harassment Policy*, any member who observed harassment had to inform about it to invoke the policy. She added that as PIPSC has a statutory obligation to have a harassment policy, it would have to act in any event. In the 2009 *Dispute Resolution and Discipline Policy* (Exhibit 2, tab 4), any kind of complaint required an investigation. In support, Ms. Bittman cited the first sentence of Part C, which states, "The Institute will not impose discipline unless an investigation has been conducted." She agreed that for any member to be disciplined, there has to be a complaint and an investigation.

[364] Concerning her use of the F-word, Ms. Bittman denied using it during a formal BOD meeting. It was put to her that she used it when speaking to Mr. Dickson during a break in the meeting. Mr. Skinner made a complaint against Ms. Bittman because she had allegedly used the words "wake the f*** up" to Mr. Dickson during a break. Ms. Bittman said that she did not use quite those words. She said that she used the F-word, that she and Mr. Dickson are friends, and that they were joking. She thought that she wrote an email almost immediately afterwards, recognizing that it was not appropriate language for the boardroom and apologizing to the BOD. Ms. Bittman received a letter from Ms. Roy dated October 23, 2014, informing her that Mr. Skinner had made a complaint against her (Exhibit 10). Ms. Bittman said that a third party had summarily dismissed it. The complaint had been made under the new 2014 *Dispute Resolution and Discipline Policy* (Exhibit 2, tab 5).

[365] Ms. Bittman disagreed with the suggestion that she should have been disciplined for what she said to Mr. Dickson because it was a private conversation between friends. He was not offended; they speak to each other in that way. She realized that it was inappropriate in a BOD setting and apologized quickly. She said that a policy would have been helpful and could have provided that she be excluded her from the meeting for the rest of the day.

[366] Concerning inconsistencies in PIPSC's disciplinary process, Ms. Bittman was asked if she could think of any other examples in which the EC had to deal with numerous complaints against an individual who was found to have engaged in aggressive and inappropriate behaviour and showed no remorse whatsoever. Ms. Bittman replied there were many "ands" in the question but admitted that she could not think of another exact scenario.

[367] When it was put to her that she thought that the EC used Mr. Skinner as an example to others, Ms. Bittman said that that was paraphrasing. During her testimony in chief, Ms. Bittman was directed to a line in the July 3, 2013, BOD minutes, which, when reading it now, seems to indicate that the EC used Mr. Skinner to set an example. Ms. Bittman said that she had stated that that was inappropriate because the EC, as the decision maker, was mandated to make a consistent decision that was not arbitrary, discriminatory, or in bad faith. She did not think that it was consistent to use Mr. Skinner as an example. When it was put to her that she did not raise that at the BOD, Ms. Bittman replied that she said that she was horrified when she read the

July 3, 2013, minutes as the EC did not look good, and she thought that the June 18, 2013, minutes were even worse.

[368] Ms. Bittman denied being a proponent of using disciplinary cases to set examples for others. She said that there were many EC meetings dealing with disciplinary matters at which she said that the bar was too low, and other ways had to be found to deal with those matters.

[369] When it was put to her that she had proposed a resolution to publish the names of PIPSC members who had been disciplined under the *Dispute Resolution and Discipline Policy* with a summary of the disciplinary offence, Ms. Bittman said that that was not technically correct. She made a motion at the BOD proposing a rationale similar to a law society or accountants' organization as a deterrent or preventive mechanism. It would alert members as to what to expect, similar to the CRA's disciplinary grid. She listened to the concerns raised by Ms. Roy and other BOD members that a publication of members' names might be used against them by the CRA, and either she withdrew the motion or it did not pass. Its purpose was to be a deterrent, which to her is not the same as setting an example.

[370] Ms. Bittman was referred to her testimony in which she stated that ideally, Mr. Skinner should have been given the option to attempt to have the complaint against him resolved informally and that not giving him that opportunity had been a mistake. She said that that was not her recollection and that Mr. Skinner was asked about it, as part of the process. In normal times, the EC would have told the president to deal with the complaints in the same way as they concerned three particular individuals, but the times were not normal.

[371] Concerning her testimony that Mr. Skinner being awarded Steward of the Year did not square with the allegation that Ms. Daviau said that she was receiving complaints against him from members in B.C., Ms. Bittman agreed that as the award was given in 2003, it was possible that there were no complaints that year but that there were some in 2013. Ms. Bittman agreed that the fact that Mr. Skinner was Steward of the Year in 2003 was not completely at odds with complaints in 2013. At the time, Ms. Bittman did not think that Ms. Daviau was lying when she mentioned the complaints at the EC meeting. However, there had since been a change in the trust level

between the two. Were she in the same situation now, she would ask Ms. Daviau to identify the complainants and show the emails.

[372] Concerning her testimony that the investigator of Mr. Skinner's complaint would have had no basis to establish what is customary or normal behaviour at PIPSC, Ms. Bittman replied that PIPSC had never used that investigator before. She agreed that it was possible that Mr. Skinner gave the investigator examples of customary or normal behaviour.

[373] Ms. Bittman agreed that parties have an opportunity to provide information to the investigator, including documentation, but she stated that when there is no opportunity to sign off on witness statements, then there is no assurance that anything reported or provided was captured. It is possible that a witness may lie to the investigator and that the complainant or respondent would have no opportunity to respond.

[374] Ms. Bittman agreed that if a party has material evidence that is not included in the preliminary investigation report, it is typically given an opportunity to respond to the report. She added that without witness statements attached to the report or the other documents provided to the investigator, there is no assurance that they were taken into account. Ms. Bittman referred to her experience under the former process, in which the investigator did not have witnesses sign statements. She made comments to the investigator that were not taken into account. She did not know who was interviewed. When it was put to her that the fault was with the investigator and not the process, Ms. Bittman replied that the investigation is part of the process. If investigative standards are in place, there is a process to follow. This was one of the reasons for a change to the dispute-resolution process that introduced investigative standards.

[375] Ms. Bittman agreed that an individual can respond to a preliminary investigation report but stated that if full witness statements are not included, the respondent does not know what the witnesses said and is not aware of any other statements or issues that would influence the investigator and are not in the report.

[376] Concerning the Friesen complaint, Ms. Bittman acknowledged that the investigator found no harassment by either party (Exhibit 2, tab 30). The EC accepted that finding.

[377] Ms. Bittman was referred to a letter from Ms. Roy to Mr. Skinner dated June 12, 2014 (Exhibit 2, tab 62). She said that she had not seen it at the time. She was referred to the second line of the second paragraph, stating, "the EC is concerned how you communicate with members …" and was asked whether she shared that concern. She replied that what concerned her in the investigation report was that Mr. Skinner had no concept of the impact of his behaviour. At the time, she thought that sensitivity training was appropriate and that it was reasonable discipline, given the finding in the Denton final report that drove the discipline.

[378] Concerning the EC's discussions about conflict of interest in Mr. Skinner's case, Ms. Bittman said that she felt that she was not in one, based on her consideration of the following: PIPSC's *Conflict of Interest Policy*, her ability to read the investigation report and make an objective and impartial decision based on the findings, and the BOD's practice of not being in a conflict of interest, even when complaints involved BOD members.

[379] Ms. Bittman was then referred to the Friesen complaint and was asked whether she thought that when Mr. Corbett and Ms. Friesen declared their conflicts of interest with respect to that complaint, other BOD members also were in conflict of interest. Ms. Bittman replied that Mr. Corbett did not declare a conflict of interest when the first meeting was held to discuss that complaint on July 3, 2013, because he was away, and the EC was not aware that he had declared that he had a conflict of interest. At the August 14, 2013, meeting, Ms. Bittman first became aware that on July 1, 2013, Mr. Corbett had written to Ms. Roy, declaring a conflict of interest. As to whether she thought that other BOD members had a conflict of interest, Ms. Bittman said that the *Conflict of Interest Policy* provides for self-declaration and that they knew best as to whether they could bring an objective mind to the proceedings. Ms. Bittman stated that she did not have a political motive for agreeing that the EC should send the Friesen complaint to investigation and that she was not aware of whether anyone else on the EC had a political motive for doing so.

[380] With respect to the Mertler complaint and her testimony that she was unaware and surprised that PIPSC had issued an apology to Ms. Mertler, Ms. Bittman said that she was surprised because Ms. Daviau had not mentioned that at the EC meeting. Ms. Bittman was then shown the minutes of the May 20, 2014, EC meeting (Exhibit 2,

tab 65), which she attended. The minutes referred to the apology (at page 3, fourth paragraph).

[381] On the Denton complaint, Ms. Bittman was referred to her testimony that she was unsure who had written the content of Ms. Denton's additional allegations. When she was referred to the part of the first paragraph that reads, "when Paul said", Ms. Bittman acknowledged that Ms. Denton had authored it but said that when she read the paragraph, it had not been evident until she read that part. Although she had earlier testified that the document was not a complaint, she now acknowledged that it could be viewed as one because it documented what had happened at a meeting. Ms. Bittman testified that it looked like someone had written notes of a meeting and said that she also writes notes, but doing so does not make them a complaint.

[382] Ms. Bittman was referred to a letter of March 3, 2014, from Ms. Roy to Mr. Skinner concerning the Denton preliminary report (Exhibit 2, tab 51). She agreed that the second paragraph in it gave Mr. Skinner the opportunity to provide additional information not included in the report, but she stated that without witness statements and documents, one could not be sure as to what the investigator possessed. She also agreed that Mr. Skinner could have reviewed the report and told the investigator about the BC/Yukon Regional Executive minutes regardless of the lack of witness statements but maintained that the added assurance of witness statements and documents that the investigator relied on was necessary.

[383] The cross-examination next dealt with six complaints that Ms. Bittman made. It was put to her that they were withdrawn, dismissed, or summarily dismissed. Ms. Bittman said that she made only serious complaints. She withdrew some of them because she did not want to make complaints against PIPSC or individual members.

[384] Ms. Bittman stated that she had reluctantly made a complaint against Mr. Corbett. But after he lost the election to Ms. Daviau, she had withdrawn it because she felt that she was out of harm's way. She made another complaint against Mr. Corbett in 2014 and agreed to conflict resolution. That stalled, and in November and December 2015, she went to the Panel of Peers, which she described as pointless. She withdrew that complaint.

[385] In 2016, PIPSC, represented by Mr. Gillis, made a breach-of-confidentiality complaint against Ms. Bittman. A sanction was imposed, without giving her an opportunity to make representations. That split the BOD.

[386] At the March 2016 EC meeting, Ms. Bittman was directed to write a briefing note for discussion to the BOD on gaps in PIPSC policies and by-laws. Mr. Gillis took it as a personal attack on him.

[387] At the April 9, 2016, BOD meeting, Ms. Daviau made a motion to go into a closed session to discuss items that were not supposed to go into a closed session. She read a prepared speech attacking Ms. Bittman's character and motives and did not inform the BOD that Ms. Bittman had been directed by the EC to write the briefing note. Ms. Daviau attacked each issue and said each was wrong. They clearly were not wrong because since then, PIPSC instituted a by-law and policy review, and the membership policy was revised and the privacy policy updated. Virtually everything in Ms. Bittman's note was valid. After Ms. Daviau's attack, Ms. Bittman was attacked by Mr. Hindle and Mr. MacDonald, the BC/Yukon regional director. Ms. Bittman made a harassment complaint against those three under the 2014 *Dispute Resolution and Discipline Policy*.

[388] Ms. Roy retained Ms. Noonan as a neutral third party. She deemed the complaint frivolous and vexatious. That was Ms. Bittman's only complaint that was summarily dismissed. Ms. Noonan was also retained for the breach-of-confidentiality complaint. When Ms. Noonan was retained, Ms. Bittman was unaware that Ms. Noonan had been Ms. Daviau's coach for one year. She found out while she was in Victoria in May 2016. Ms. Friesen was in contact with her, and Ms. Bittman mentioned that PIPSC had retained Ms. Noonan. Ms. Friesen mentioned that Ms. Noonan had been Ms. Daviau's coach. She forwarded to Ms. Bittman emails between Ms. Daviau and Ms. Noonan that Ms. Daviau had shared with Ms. Friesen. Ms. Bittman showed the emails to her lawyer, who wrote to Ms. Noonan, strongly suggesting that she was in a conflict of interest and that she should not have taken the mandates because of her work for PIPSC and her relationship with Ms. Daviau. Ms. Noonan denied that any such conflict of interest existed. Ms. Bittman received a letter from Ms. Roy, who was in a conflict of interest, which said that Ms. Noonan was not in a conflict of interest. Ms. Bittman said that she could have judicially reviewed that decision but that she had been fighting other

issues. On January 9, 2017, Ms. Bittman made a complaint against Ms. Daviau after Ms. Bittman's continual requests for mediation, to put everything behind them.

[389] Concerning the breach-of-confidentiality complaint, Ms. Bittman said that she always contended that what happened at the April 2016 BOD meeting was retaliation against her, as was the breach-of-confidentiality complaint. At the February 21, 2016, BOD meeting, she made a motion to terminate Mr. Gillis. After that, things changed at PIPSC.

[390] Ms. Bittman testified that she did something else that Ms. Daviau did not like. She invoked By-law 16.3.1 to call a special BOD meeting. Normally, only the president can call one, unless seven BOD members force a special meeting. To Ms. Bittman, it was part of the chain of events.

[391] At that point, Ms. Bittman commented to Mr. Welchner that she thought that they were at the hearing of Mr. Skinner's complaint, not hers.

[392] Ms. Bittman said that she spent a year fighting for her life and that she could not believe that PIPSC would not talk to her. She asked Ms. Daviau to speak to her. She did not want 2017 to be another year like 2016, so she withdrew her complaint to the Board.

[393] Ms. Bittman disagreed with the suggestion that she was using her role as a witness as a platform to tell the Board about all the injustices that took place. She asserted that she answers questions the way she hears them. When she received the letter from Mr. Gillis, Ms. Bittman asked PIPSC by email if the duty of loyalty trumped the duty of honesty as a witness. Mr. Ranger replied that telling the truth is not incompatible with the duty of loyalty.

[394] Ms. Bittman acknowledged that she made internal complaints against Mr. Lazzara in June and July 2014 and that she withdrew them in August 2014. She also made an internal complaint against Mr. Tait in June 2014 and withdrew it in August 2014. She made that one on behalf of Ms. Friesen because of a PIPSC policy that states that if one observes harassment, one should make a complaint. She withdrew it because she had conversations with Ms. Daviau, who wished to resolve the matter another way, and Ms. Bittman had wanted to cooperate with PIPSC and align with Ms. Daviau's wishes.

[395] The cross-examination then returned to the Denton complaint. Ms. Bittman was referred to her testimony that the investigator's finding that Mr. Skinner had engaged in retaliation was equivocal because she used the word "may" (Exhibit 2, tab 53, page 61, second paragraph). Ms. Bittman said that she read that line in isolation. She agreed that after reading the full paragraph at page 62, the investigator was unequivocal that Mr. Skinner had engaged in retaliation. When imposing discipline on Mr. Skinner, the EC based its decision on the final report.

[396] Ms. Bittman was then referred to the emails between Ms. Aschacher and Ms. Roy (Exhibit 1, tab 12) concerning the October 17, 2013, meeting of the BC/Yukon Regional Executive and her testimony that Ms. Roy's response was not helpful. Ms. Aschacher had asked if Mr. Skinner and someone who had made a complaint against him should be in the same room. Ms. Roy said that the parties did not have to separate and that they were expected to act professionally. When she was asked why that was not helpful, Ms. Bittman said that it was based on her CRA experience, in which parties were separated. Ms. Bittman disagreed with Ms. Roy's answer. It was a cavalier response and should have provided more guidance. Ms. Bittman agreed that Ms. Aschacher did not specifically ask about the hospitality suite. When she was asked whether it would be a reasonable inference that in business as usual, a complainant should not be excluded from the hospitality suite, Ms. Bittman replied that business as usual would mean full participation in all formal events related to the regional council meeting and dinner, and if the hospitality suite is for everyone, it means that everyone is invited to attend.

[397] Ms. Bittman disagreed with the suggestion that she had said that the investigation report was inaccurate because it omitted correspondence between Ms. Aschacher and Ms. Roy. She asserted that she had said that the EC was not aware of that correspondence during its deliberations and that it could have been a game changer for her had she known that people were trying to do things correctly. She was of the view that Ms. Roy should have given the correspondence to the EC. Ms. Bittman said that all the information that the EC heard and received was quite negative about Mr. Skinner in that it stated that he was someone in B.C. who had gone rogue and who was damaging members. There were concerns about the BC/Yukon Regional Executive because PIPSC sent Mr. Hindle there as an observer. Ms. Bittman said that without the full picture, the best decision cannot be made.

[398] Ms. Bittman said that she read the Denton final report before making her decision. She was referred to page 50 of it, which reproduces the correspondence between Mses. Aschacher and Roy. She acknowledged that it was the game changer that she had just referred to but did not recall that it was in that report. The EC did not have it in October 2013 but should have had it at the time of the correspondence. While it was part of the final report, Ms. Bittman said that had the correspondence been provided earlier, it would have supplied a more balanced view of things. When she was asked why, Ms. Bittman replied that when making a decision, one takes everything in that is in the background — it is not easy to discard information. The EC was to render decisions on Ms. Mertler's and Ms. Denton's complaints at the same time. It was long ago, and Ms. Bittman could not recall what was in her head then.

[399] Ms. Bittman reiterated her testimony that under the 2009 *Dispute Resolution and Discipline Policy*, the general counsel would prepare a briefing note and bring it to the EC, and the EC would decide if the complaint was frivolous, vexatious, or without merit. If it had merit, it was sent to investigation, or the EC would impose discipline. She said that PIPSC members were encouraged to resolve complaints informally; PIPSC's legal section would retain carriage and have oversight.

[400] The three complaints in question came to the EC at different times. For the Friesen complaint, several meetings were held before the EC decided on July 3, 2013, to have it investigated. The Mertler complaint was sent to investigation the same day. The decision to investigate the Denton complaint was made in August 2013.

[401] Ms. Bittman agreed that the existing policy was applied to Mr. Skinner. He was asked if he was willing to enter into mediation, and he made a counter-complaint. She agreed that Ms. Roy wrote letters to him offering informal dispute resolution for each of the complaints, for the Friesen complaint on June 17, 2013 (Exhibit 2, tab 17), for the Mertler complaint on July 9, 2013 (Exhibit 2, tab 34), and for the Denton complaint on August 30, 2013 (Exhibit 2, tab 42).

[402] Under the March 2016 PIPSC guidelines concerning investigation standards, the investigator is required to give witnesses their statements to sign. Ms. Bittman said that was done to give witnesses the opportunity to correct or expand on what they said to the investigator. She agreed that there was no such obligation under the *Dispute*

Resolution and Discipline Policy but stated that some investigators ensured that witnesses signed their statements, while others did not.

[403] When it was put to Ms. Bittman that she had stated that generally speaking, EC decisions can be political in nature, she replied that she did not say "generally" but acknowledged that some EC or BOD decisions have been political in nature.

[404] She supported the EC's decision to refer each of the three complaints to investigation. Concerning corrective measures, in the Friesen complaint, there was no finding of misconduct. As the issue was inappropriate behaviour by both Mr. Skinner and Ms. Friesen, the EC did not impose discipline. In the Mertler complaint, there was no finding of discipline. Ms. Bittman supported the decision that Mr. Skinner send letters of apology as his conduct had not risen to the level of harassment. Speaking for herself, she said that she had no political agenda in making those decisions and that she had no reason to suggest that other EC members were influenced by politics — nobody said that he or she was in a conflict of interest.

[405] When she was asked why at its April 22, 2014, meeting the EC imposed sensitivity training on Mr. Skinner, Ms. Bittman said that what resonated with her was that he had been largely unaware of the impact of his behaviour or actions on other people. She thought that the training was an appropriate disciplinary measure.

[406] Ms. Bittman said that the restrictions in the *Canada Not-for-profit Corporations Act* (S.C. 2009, c. 23) were considered during the EC's discussion about imposing corrective measures on Mr. Skinner. Ms. Roy indicated that because of that Act, suspending a PIPSC director was not possible because doing so requires holding a special meeting. Furthermore, the EC could not remove a director's substantial duties, and it was told that the substantial duties of Mr. Skinner's position were attending meetings of the BOD, Regional Council, and BC/Yukon Regional Executive.

[407] Ms. Bittman said that to the best of her recollection, while the EC was aware of the two 2012 letters that Mr. Skinner had received, they did not come into play in its decision to impose corrective discipline on him. Her focus was the comment in the investigation report that multiple complaints had been made, that a finding had been made in only one complaint, and that inappropriate behaviour was mentioned in the two others. To Ms. Bittman, the corrective measures of the sensitivity training, the letters of apology, and the suspension of Mr. Skinner's hospitality expenses were

reasonable. She assumed at the time that Mr. Skinner would issue the apologies and take the training and that it would all be done with.

[408] Ms. Bittman was referred to paragraph 14 of Mr. Skinner's complaint to the Board, which alleged that she had told Mr. Brodeur what to do. She flatly denied it and said that she had no relationship with Mr. Brodeur.

[409] Ms. Bittman stated she had no personal involvement in the disputes between Mr. Skinner and Ms. Denton that were investigated or in the disputes between him and Ms. Mertler and Ms. Friesen. She was not interviewed by the investigator as part of any of the three investigations.

[410] Ms. Bittman was asked to respond to Mr. Skinner's suggestion that she hated him and that she could not have demonstrated the required neutrality when she considered the complaints against him. She denied it and said that she has always liked Mr. Skinner and that she has much respect for him. They were on the AFS executive together from 2006 to 2009 and were on the same side on many issues and against the former AFS president, Mr. Lazzara. Ms. Bittman said that she had a temporary assignment at PIPSC as an employment relations officer that began in August 2009. She received a letter from Mr. Gillis revoking her assignment, and no reason was provided. Mr. Skinner wrote a letter to PIPSC supporting Ms. Bittman and stating that what had been done was completely wrong. He was the only person who did that. Because of it, Ms. Bittman gave Mr. Skinner considerable slack. She attributed his mean actions to her to other people because he would not have done them on his own.

[411] Ms. Bittman said that she made a motion at the BOD that it apologize to Mr. Skinner for the fact that the investigation reports were placed on the Virtual Binder for the BOD's access.

[412] Ms. Bittman was referred to her letter of June 20, 2014 (Exhibit 2, tab 102), to Mr. Gillis, Ms. Roy, and Mr. Ranger, in which she wrote, "While I don't always agree with Mr. Skinner's positions, I have always had a certain respect for him, as I viewed him as someone who provided strong representation for our members …" and asserted that the statement was accurate.

[413] Ms. Bittman was asked whether in her EC role, she had declared a conflict of interest concerning other members. She was referred to her June 20, 2014, letter (Exhibit 2, tab 102, fifth paragraph), in which she identified several cases in which she had declared herself to be in conflict of interest and was asked whether it was accurate. She affirmed that it was. She said that in one complaint, made by PIPSC against Mr. Lazzara, she did not initially recuse herself. Mr. Lazzara had said that she was not in conflict of interest. The EC's decision was serious, involving a suspension, and there was an appeal to the BOD under the 2009 *Dispute Resolution and Discipline Policy*. Because of the serious consequences for Mr. Lazzara, at the BOD, Ms. Bittman made a motion that it had to consider additional appeal documents and send the complaint back to the EC, which did happen. Later, more allegations of conflict of interest were made against Ms. Bittman. Mr. Gillis and Ms. Roy asked her to declare a conflict of interest because they could better defend themselves if it went to the Board. Ms. Bittman recused herself, in the best interests of PIPSC. In the other cases, she recused herself immediately.

[414] Ms. Bittman was referred to section 4 of page 1 of Mr. Skinner's complaint to the Board, at which he alleges that she colluded with Ms. Daviau and Ms. Friesen. She replied that she did not collude with anyone. At the relevant time, Ms. Daviau was her friend, as was Ms. Friesen, although to a lesser extent. Ms. Bittman said that she was not political and that she did not make friends at the BOD to advance her position.

c. Re-examination

[415] Ms. Bittman said that it is customary for the EC to receive investigation reports in advance, to prepare for the eventual meeting. In some cases, it did not receive the report, just a briefing note. At other times, it received the report just before the meeting. She assumed that everyone read the reports.

[416] Ms. Bittman found out from Ms. Friesen that Ms. Noonan had coached Ms. Daviau. Several people made complaints against Ms. Daviau based on her conduct at the November 2012 AGM. The harassment complaint against Ms. Daviau was determined founded.

[417] In an email to Ms. Bittman, Ms. Roy declared a conflict of interest because she would be a witness in the investigation. She felt that none of her staff should be involved because it put them in an untenable position. An outside lawyer was retained

to take on Ms. Roy's role in the process. Ms. Bittman's understanding is that while the complaint was ongoing or near its end, Ms. Noonan coached Ms. Daviau from March and April 2013 through to her election for president in December 2013 or January 2014. Ms. Bittman said that that was according to the emails she possesses between Ms. Daviau and Ms. Noonan.

B. For the Institute

1. Ms. Roy

a. Examination-in-chief

[418] Ms. Roy has been employed at PIPSC since 2004. She was an employment relations officer from 2004 to 2008. She has been legal counsel since 2008 and general counsel since May 2011.

[419] The EC is composed of 5 members: the president, 2 full-time vice-presidents, and 2 part-time vice-presidents. The EC generally governs PIPSC affairs between BOD meetings. PIPSC has 300 constituent bodies. The EC is not involved in reviewing the meeting minutes of those bodies.

[420] The BOD is composed of 15 members, of which 5 are the EC members. There are 10 directors — 9 from the regions, and 1 from the advisory council. At the time, Mr. Skinner was the director from the BC/Yukon region.

[421] As general counsel, Ms. Roy would attend EC meetings when she was requested to assist. In relation to the three complaints, she or someone on her staff would typically have attended the EC meetings when those complaints were discussed. She attends BOD meetings upon request and would have attended when these complaints were discussed.

[422] Ms. Roy described her role in these complaints and counter-complaints. Pursuant to policy, they would have been made through her office. She would have reviewed them and informed the EC, adding her recommendations for its consideration as to whether the complaints should be screened out as frivolous, vexatious, or without merit. If a complaint were screened in, she would have assisted the EC in its deliberations as to next steps. She would have helped carry out the next steps, as directed by the EC. The policy she referred to is the 2009 *Dispute Resolution and Discipline Policy*.

[423] Ms. Roy was referred to PIPSC's *Harassment Policy* of August 11, 2007 (Exhibit 2, tab 6). She affirmed that it was in force at the relevant time and that no changes had been made to it. She also confirmed that the penultimate paragraph at page 2 referred to allegations of retaliation for filing a complaint.

[424] She stated that as is written in the *Harassment Policy*, harassment complaints are dealt with under the 2009 *Dispute Resolution and Discipline Policy*, which was in force when the three complaints were made in 2013.

[425] After the complaints were made, Ms. Roy performed the screening function. As examples, she referred to several complaints against EC members that were screened-in at the time of Mr. Skinner's complaints. They included two against Ms. Daviau, who was a vice-president at the time, one of which was made by a member of PIPSC's management committee, and the other by a few members concerning related events after an AGM. One was made by a vice-president (Mr. Gray) against two vice-presidents, Ms. Bittman and Mr. Burns. Mr. Burns made one against Mr. Gray. And complaints were made involving Mr. Corbett and Ms. Friesen. Ms. Roy said that this is not an exhaustive list.

[426] Ms. Roy said that politics plays no role in the screening phase of the policy. The allegations are reviewed in a way similar to how a tribunal makes a *prima facie* assessment: if the events occurred, would they amount to harassment or other misconduct, depending upon the allegation.

[427] Typically at the screening stage, there is no opportunity for complainants to provide additional information or to make submissions to Ms. Roy. Occasionally, a complaint contains just enough information to raise a question; e.g., if the events occurred, would they amount to harassment or other misconduct? If a complaint refers to a harassing email but the email is not attached, Ms. Roy would request the email. The screening stage is not meant to be a determination on the merits. Screening-in a complaint means not that it is founded but that it is worth a closer look. As indicated in the policy, "screening in" means only that the complaint was not frivolous, vexatious, or without merit.

[428] The screening process changed in the new 2014 *Dispute Resolution and Discipline Policy* (Exhibit 2, tab 5). Its wording did not change, but the practice did. Under the new practice, if a complaint is made against a BOD member, it is referred to

a neutral third party for intake, who then makes recommendations to Ms. Roy. The 2014 policy was a completely new way of dealing with disciplinary issues at PIPSC and was designed to remove any doubt that politics would have any place in it. Ms. Roy asserted that she stood by her statement that politics were not involved in the process. She stated that members perceived that the EC and BOD were spending too much time dealing with those matters, which she agreed with, and wanted the leadership to spend its time on other things.

[429] Referring to Part C of the 2009 *Dispute Resolution and Discipline Policy*, Ms. Roy said that whether an investigator prepares a preliminary or just a final report is set out in the investigator's mandate. It was typical that a preliminary report was required.

[430] Part B of the 2009 *Dispute Resolution and Discipline Policy* provides that a copy of the investigator's report be given to the complainant and respondent, who then have the opportunity to comment on it. If there is both a preliminary and a final report, PIPSC practice is that the parties are given an opportunity to comment on the preliminary report. Those comments go to the investigator, who then has the opportunity to address them. The final report is prepared and shared with the EC, together with the parties' comments on the preliminary report. The parties are given the final report once the EC has made a decision.

[431] Commenting on the suggestion that Mr. Lazzara was given the opportunity to comment on a final report, Ms. Roy said that he was subject to three investigations. In one of those cases, the investigator was, atypically, a forensic accountant. As no preliminary report had been prepared, Mr. Lazzara was given the opportunity to comment on the final report.

[432] The *Dispute Resolution and Discipline Policy* that was in force before 2009 gave responsibility to the BOD for imposing discipline.. The 2009 policy was approved by the BOD, as indicated in the extract of minutes of the BOD meeting of January 17, 2009 (Exhibit 29).

[433] The EC made the decision to refer all three complaints against Mr. Skinner to the same investigator on Ms. Roy's advice, based on the following factors: the parties were in the same geographical area, the respondent was the same, and perhaps, the witnesses would be the same. To Ms. Roy, it seemed an efficient use of resources. She was present at the meeting when the EC made that decision.

[434] Ms. Roy's role is to select the investigator, who almost always, and always since she became general counsel, has been an external third party. When selecting an investigator for Mr. Skinner's complaints, she contacted a Vancouver labour law firm with which PIPSC had dealt. It made recommendations. She contacted it and selected Ms. Price. Neither Mr. Skinner nor his representative objected to the investigator's appointment.

[435] Three terms of reference documents were drafted for the investigator (Exhibit 2, tabs 10, 11, and 12) between September and November 2013 because the file evolved over time, as indicated in the preambles concerning the complaints and counter-complaints in each mandate. As indicated in one of the terms of reference (Exhibit 2, tab 12, item 4), Ms. Roy received preliminary reports for each complaint against Mr. Skinner. He was provided copies of those reports, was given the opportunity to respond in writing to each one, and provided submissions to the investigator on each one. Ms. Roy stated that the EC receives copies of the preliminary reports. Ms. Roy received a copy of the final report.

[436] None of Ms. Roy, her staff, or the EC plays any role in determining the witnesses who will be interviewed by the investigator. That applies to all investigations under the *Dispute Resolution and Discipline Policy*.

[437] At the time of the investigation into the three complaints against Mr. Skinner, there were no policies in place that required that witness statements be prepared by the investigator and provided to the parties. Subsequently, in 2016, PIPSC adopted guidelines concerning the conduct of investigations, and the new policy requires witness statements. One terms of reference document (at Exhibit 2, tab 12) includes a requirement that the preliminary report contain a summary of the evidence provided by the complainants.

[438] Ms. Roy asserted that any suggestion that she, her staff, or the EC tinkers or interferes with investigators' reports is false and offensive.

[439] Ms. Roy was referred to the minutes of the BOD meeting of June 18, 2013 (Exhibit 2, tab 16, #5.14), about the Friesen complaint and legal counsel apprising the BOD that a complaint had been made on June 6, 2013, less than two weeks before that meeting. Ms. Roy had personal knowledge of the meeting because she had prepared a briefing note in advance. She was replaced at the meeting by another staff member.

Perhaps the confusion in the minutes, which indicate that both she and P. Campanella (legal counsel) attended, was due to the BOD discussing her briefing note.

[440] The purpose of Ms. Roy's briefing note (Exhibit 2, tab 15) was to recommend to the EC that it should explore having parties resolve complaints informally before considering the next steps.

[441] Ms. Roy attended the EC meeting of July 3, 2013 (Exhibit 2, tab 20). The minutes reflected the concern about embarking on another investigation. She said that at that stage, the EC had to decide on the next steps with respect to the complaints against Mr. Skinner. Informal resolution was no longer an option. Part C of the 2009 *Dispute Resolution and Discipline Policy* required that an investigation be conducted if discipline is to be imposed. The EC had to consider if discipline was a potential outcome. The concern voiced at the EC meeting was that investigations are onerous and expensive and that they can be divisive. The EC was faced with Ms. Friesen's complaint and Mr. Skinner's counter-complaint. If discipline was a potential outcome in either case, there was a duty to investigate.

[442] When she was asked why the two 2012 letters to Mr. Skinner were discussed by the EC, Ms. Roy replied that it was done because of the *Dispute Resolution and Discipline Policy*'s requirement to conduct an investigation if there was to be discipline. The EC had to consider the potential outcome if there were to be next steps. She was referred to this statement in the minutes: "There is a need to show leadership and set the example", and was asked to respond to the suggestion that it indicates pre-judgment by the EC. Ms. Roy's recollection was that the discussion concerned whether there was a need for an investigation and whether there were other ways to deal with the complaints. She said that her role was to remind the EC of the *Dispute Resolution and Discipline Polic*y's requirement, in that if an investigation is not conducted, the EC is limited on how it may deal with misconduct. She asked the EC to think about the situation of the complaint being founded.

[443] Ms. Roy was referred to this statement in the minutes: "It was noted that members of BC are afraid to go against P. Skinner as they claim he is a bully and they fear his reprimand", and was asked how it impacted the EC's consideration of the complaint. She said that the debate at the time was whether the complaint should be investigated and if not, the options. The EC could not erase its knowledge. The only

discussion was whether to conduct the investigation. The downside of an investigation is that there is no control over the result. The EC decided to conduct an investigation and to be bound by the result.

[444] Concerning the Denton complaint and the BC/Yukon Regional Executive minutes about the hospitality suite, to Ms. Roy's knowledge, the EC does not review those types of minutes before they are posted and did not know if it reviews them after they are posted.

[445] The Denton complaint contained allegations against Mr. Skinner and Mr. Sahota. Mr. Sahota was not made a respondent to the complaint due to a combination of how Ms. Denton worded her original complaint and how she responded to Mr. Ranger's query as to whom she had complained against (Exhibit 30, the emails between Mr. Ranger and Ms. Denton on August 6 and 8, 2013). Ms. Roy was asked to respond to the suggestion that PIPSC had an obligation to proceed with a harassment complaint against Mr. Sahota even if Ms. Denton wanted to proceed only against Mr. Skinner. Ms. Roy said that PIPSC had a duty to clarify and seek further information. There was not necessarily a duty to pursue a harassment complaint against Mr. Sahota in that case.

[446] Mr. Skinner's position on the hospitality suite was that he could not be found to have engaged in retaliation since there was no hospitality suite, and thus, no benefit was denied Ms. Denton. Ms. Roy responded that Ms. Price based her finding on the evidence before her. She relied on case law for the definition of retaliation and considered PIPSC policy. No benefit lost is neither here nor there. The public comments and the insinuation that there would be consequences for making a complaint are in and of themselves retaliation. Ms. Roy thought that Ms. Price's findings were reasonable.

[447] Ms. Roy was referred to Mr. Skinner's allegation that in her report, Ms. Price made comments on the behavioural issue that only a psychiatrist or registered psychologist is qualified to make. Ms. Roy said that based on her experience in reviewing final investigation reports, it is not uncommon for investigators to refer to the behaviour of the parties that they observed.

[448] The investigator's terms of reference indicate that the investigator determines the relevant witnesses (Exhibit 2, tab 12, page 2).

[449] Ms. Roy had no knowledge of Mr. Skinner's allegation that Ms. Price breached her promise to him not to interview other directors and said that any such promise would be highly unusual and inappropriate unless Ms. Price knew from the outset that those witnesses were irrelevant.

[450] Concerning Mr. Skinner's allegation that he was entitled to broad disclosure in responding to the complaint, including the investigator's notes, Ms. Roy's email to him of October 23, 2013 (Exhibit 2, tab 111), stated he was not entitled to the requested disclosure, since in her view, he was entitled only to the information necessary to respond to the harassment allegations.

[451] It was not part of the investigator's mandate to make a determination about Mr. Skinner's allegation that the EC was in a conflict of interest.

[452] Ms. Roy recommended that Ms. Denton's additional allegations be investigated. The EC decided to investigate them. Retaliation was covered in the *Harassment Policy*, and the allegations could potentially have constituted retaliation.

[453] Ms. Roy declined Mr. Skinner's request that as he was a director, PIPSC should pay for his legal representation (Exhibit 2, tab 125) as none of the parties was entitled to such payment. She declined a similar request by Ms. Friesen (Exhibit 2, tab 124). To Ms. Roy's knowledge, PIPSC has never provided legal representation to a party in an internal harassment complaint. In one case that took place years after Mr. Skinner's issues, the BOD agreed to partially reimburse legal costs directly or indirectly related to an internal investigation, which was done after the fact and not during the investigation. That case did not involve an internal harassment complaint.

[454] The EC met on April 22, 2014, to consider the Denton and Mertler investigation reports; the investigation into the Friesen complaint had not yet been completed. Ms. Roy attended. She made personal notes (Exhibit 5), which included highlights for her to inform those at the meeting about, along with action items. They were not a thorough representation of what was said at the meeting. The context of the notes is that Ms. Roy was a guest of the EC. She noted what was said, which she would have to address when requested to by the chair. They note that Ms. Bittman thought that the investigator's mandate should include the two 2012 letters. Ms. Roy said that she would have reminded the EC of the parameters of the mandate, which did not include

investigating those two letters; it was limited to the complaints and counter-complaints involving Mses. Denton and Mertler.

[455] As to whether Ms. Roy told the EC of the relevance of the two 2012 letters to Mr. Skinner in relation to its decision as to whether discipline was warranted, Ms. Roy said that a few times at the meeting, she reminded the EC of the two decisions to be made, which were (1) whether there was misconduct, which had to be decided based on the investigator's findings, and (2) if the EC found that there was misconduct, it had to determine an appropriate remedy. In doing so, the EC had to turn its mind to the bigger picture of finding a way to correct the behaviour; thus, it might have been appropriate to consider the two 2012 letters when fashioning an appropriate remedy. By the phrase "big picture", Ms. Roy said that it referred to all the circumstances — the position held by Mr. Skinner, his contributions to PIPSC, any findings by the investigator that were mitigating or aggravating, and past discipline imposed by PIPSC.

[456] When she was asked about how the EC should deal with a finding of fact that is contrary to what an EC member believes occurred, Ms. Roy responded that a third party was mandated to investigate, met with the parties, met with witnesses, and weighed the evidence. One would be hard-pressed to substitute one's views for that of the third party unless there were serious concerns that would justify not relying on those findings. Unless there is a good reason, one is bound by the findings; if not, one must explain why.

[457] When she was referred to her notes, which state, "Investigator would not know about pattern; role of EC", Ms. Roy said that it was her reminder to the EC of the two-step test, which is asking if there was misconduct, and if so, what disciplinary measures should follow. As to how the EC exercised its role at the April 22, 2014, meeting, Ms. Roy observed that some EC members were open about their concerns about the process and how to deal with it. The EC was receptive to being reminded of its role. She believes that the EC was able to focus on the conclusions of the investigation reports and to answer the two-step test.

[458] The two 2012 letters were among what the EC considered when fashioning a disciplinary measure. The letters factored into the EC's conclusion that Mr. Skinner needed training as a corrective measure in the hopes of arriving at some remedy to allow him to continue and to not put other members at risk of being subject to the

same harassment or misconduct that the two investigation reports had established occurred.

[459] The EC considered other factors that Ms. Roy observed when it decided whether training was an appropriate remedy, given Mr. Skinner's lengthy contribution to labour relations as a steward and an active member. The aggravating factors were his senior leadership role as a director, his lack of remorse or admission of wrongdoing, the understanding of someone with so much experience in dealing with labour relations, and how PIPSC handled past harassment cases. The "Record of PIPSC Disciplinary Decisions" (Exhibit 2, tab 82) was a reference point used when discipline was imposed.

[460] Ms. Roy was referred to Mr. Skinner's allegation that since there was no finding of harassment against Ms. Mertler, the EC should not have considered the findings in the Mertler complaint when deciding on disciplinary measures and requiring an apology to Ms. Mertler. Ms. Roy responded that Mr. Skinner's apology to Ms. Mertler was not a precondition to his resumption of the full scope of his duties. The only precondition was training. While an apology was required, it was left to Mr. Skinner whether or how to comply with that requirement.

[461] As to whether it was appropriate for the EC to consider the Mertler report's findings when fashioning corrective measures, Ms. Roy said that the EC's situation was that five senior elected officials were tasked with overseeing the conduct of its volunteer members. They were expected to fashion disciplinary measures to correct behaviour and to allow people to participate fully and freely in union activities. In the matter involving Mr. Skinner, the EC was faced with two reports, one clearly finding misconduct in terms of retaliation, and the other finding inappropriate behaviour. The EC also knew that in the past, Mr. Skinner had been notified that his communication tone might lead to issues later if he did not soften it. Ms. Roy said that the Mertler report stated that Mr. Skinner's conduct was likely to continue. In Ms. Roy's view, the EC would not have carried out its duty had it not considered the findings in the Mertler report when deciding on a disciplinary measure.

[462] Concerning the mention in the letter of discipline that Mr. Skinner had breached confidentiality by obtaining witness statements before Ms. Price had met with him, Ms. Roy said that while that was not considered misconduct, the EC insisted that it be included in the letter in the hope that it would not reoccur in similar circumstances in

future. Ms. Roy said that seeking a witness statement implies that the witness will be told why the statement is being sought, which creates a risk that the integrity of the witness would be compromised and that his or her statement would potentially be tainted. Obtaining such statements was not a process that had been followed in similar investigations.

[463] As for the fact that Mr. Lazzara had obtained affidavits in support of his fight against disciplinary action against him, Ms. Roy said that that was in the context of his appeal to the BOD after the investigation was completed and after the EC had decided on discipline. The integrity of the investigation was not an issue.

[464] Ms. Roy confirmed the statement in the minutes of the EC meeting of August 14, 2014 (Exhibit 2, tab 87), reciting that she had read aloud the two draft letters of apology from Mr. Skinner (Exhibit 2, tab 86) and that everyone had agreed that the apologies were qualified.

[465] In her dealings with the EC up to and including April 22, 2014, Ms. Roy did not observe anything that supported Mr. Skinner's allegation that the EC was motivated by bad faith and that it had improper purposes for disciplining him. She observed that the EC worked hard to achieve a fair outcome for all parties, including Mr. Skinner.

[466] Ms. Roy disagreed with Mr. Skinner's allegation that the requirement for sensitivity training was harsh and unprecedented. The report found that misconduct had occurred and that there was a real risk that it would reoccur. The goal was to find a corrective measure that would provide results in the future, so it was decided to try something new in the hope that it would achieve results. It was never at issue that Mr. Skinner had done good work for members, and the EC desired that he continue to and that he not go down the harassment road. As to whether training as discipline was unprecedented, Ms. Roy said that requests for training had been made in the past but in cases not as specific as that of Mr. Skinner.

[467] According to Ms. Roy, the EC's rationale behind prohibiting Mr. Skinner from participating in PIPSC activities until the sensitivity training was completed was that it wanted to mitigate the risk that similar events would reoccur. The rationale for allowing him to attend meetings of the BOD, BC/Yukon Regional Executive, and BC Regional Council was discussed at its April 22, 2014, meeting. It wanted Mr. Skinner to keep functioning in his key director role while limiting activities not essential to his

role, to mitigate the risk to other members. The EC was aware that under the *Canada Not-for-profit Corporations Act*, a director cannot be removed from his or her duties except by a special meeting. Ms. Roy would have advised them of that Act during the meeting. Her view was that the EC's proposal was commensurate with the legislation. She was referred to the meeting minutes (Exhibit 2, tab 55), specifically to the middle paragraph of the last page, which stated, "Does not think we would be successful removing him from the Board of Directors." Ms. Roy said that she told the BOD that it could not withstand a challenge were Mr. Skinner removed because the BOD did not have the authority to remove him from his director role.

[468] Ms. Roy was referred to her letter of May 30, 2014, to the BC/Yukon Regional Executive (Exhibit 2, tab 119). Its context was a complaint Mr. Sahota made against the EC about the appointment of Mr. Hindle as an observer and about the selection of the members of the Finance Committee.

[469] Concerning Mr. Skinner's allegation that only the BOD, and not the EC, had jurisdiction to suspend his hospitality allowance, Ms. Roy said that the EC can take any action it wishes when imposing disciplinary measures in accordance with the *Dispute Resolution and Discipline Policy*.

[470] Ms. Roy stated that she does not believe that a hospitality allowance is essential to carrying out a director's core duties.

[471] Ms. Roy was reminded of Mr. Skinner's allegation that it was improper to impose a requirement that a PIPSC representative (Mr. Hindle) be present at PIPSC functions that Mr. Skinner was permitted to attend. Ms. Roy said that the EC was concerned because many of the facts that led to the finding of harassment and inappropriate conduct had arisen in the course of those activities. There were concerns as to how PIPSC and the complainants would be portrayed at the BC/Yukon Regional Executive and that that executive would continue to express the views it set out in its complaint that Ms. Roy responded to on May 30, 2014 (Exhibit 2, tab 119).

[472] In response to Mr. Skinner's allegation that the requirement that an observer be present was intended to humiliate him and encourage him to resign, Ms. Roy said that there had been no discussion or anything to suggest that that was the EC's intention. It had been concerned with PIPSC's business continuing in a respectful and orderly fashion.

[473] Ms. Roy did not accede to Mr. Tait's request for assistance drafting the apologies (Exhibit 2, tab 89, page 2) because it would have been inconsistent with the EC's decision. She was asked to review and not to draft them. She had never helped anyone prepare an apology. As for Ms. Bittman receiving assistance preparing an apology after she was found guilty of harassment and ordered to apologize, Ms. Roy said that Mr. Thompson was appointed to review Ms. Bittman's letter, to verify whether it met EC requirements.

[474] Ms. Roy agreed that the CRA has a disciplinary grid but that the Treasury Board and employers in the core public service do not. On several occasions as an employment relations officer with PIPSC, Ms. Roy represented members or advised employees who were subject to investigation for harassment, and the investigator was a third party. The employer involved in the investigation selected the investigator, and the employee usually had no input in the selection. PIPSC rarely had input, but if there were concerns, it would raise the issue.

[475] The employee or PIPSC had very little to no input into drafting the investigator's mandate and was often provided with the mandate well after the fact. If concerns were raised, they were often not dealt with until a grievance was filed after the investigation. The investigator's fees were always paid by the employer at issue.

[476] In the Mertler report, Ms. Price concluded that she was not confident that Mr. Skinner would not engage in similar conduct in the future unless he changed his approach. When the EC imposed discipline, Ms. Roy was not aware of any similar findings in previous cases at PIPSC.

[477] Mr. Brodeur was a member of the EC (from January 1 to the end of June 2014) at the time the EC decided to discipline Mr. Skinner. Mr. Skinner alleged that it was incumbent on the EC to translate the investigation reports and the parties' submissions before it met to decide on discipline. Ms. Roy said that Mr. Brodeur's levels of English reading and oral comprehension were both very good. During that period, the EC did not translate documents for him. The documents presented to it were in English, and if they were drafted in French, they were translated. Ms. Roy's understanding of Mr. Brodeur's English-language level was based on her attendance at EC meetings. Mr. Brodeur had been a BOD member and had presented documents in English. Ms. Roy's office was available to respond to questions about language, of

which Mr. Brodeur seldom availed himself. To her knowledge, Mr. Brodeur accepted the practice of not translating large documents, such as investigation reports. For a large document accompanied by a briefing note, the note had to be translated in the normal course of the BOD's workings, but not the report.

[478] Concerning Mr. Skinner's belief that the sensitivity training had to involve a one-on-one session, Ms. Roy said that that was not her understanding of the EC's decision. It had clearly expressed that the training had to be tailored, but that did not mean that a group setting was inappropriate. It had been concerned about sending him on a standard public-service harassment course. The reports indicated that Mr. Skinner had taken a harassment course. But in the EC's view, it had not helped.

[479] Concerning Mr. Skinner's allegation that the sensitivity training offered to him required that he undergo counselling by a psychologist (Exhibit 2, tab 63), Ms. Roy said that that was never expressed by the EC and that it was not a criterion used to arrive at the recommended firMs. Ms. Roy invited Mr. Skinner to propose training courses, which he did (Exhibit 2, tab 89).

[480] With respect to foul language used by directors at BOD meetings, Ms. Roy said that it was highly unusual while she was present. She said that it was highly unusual for one BOD member to direct foul language at another BOD member during a meeting, and if it occurred, the chair would intervene. As to the suggestion that it was not uncommon for a BOD member to call another "full of s***" during a meeting, Ms. Roy said that it was not a usual practice when she attended BOD meetings. She gave the same answer about unprofessional language at BOD meetings. She did not attend every BOD meeting, and when she did, it was only for a portion of the meeting.

[481] Concerning Mr. Skinner's testimony that everyone he knew at PIPSC constantly used the F-word, Ms. Roy said that she had heard it in the workplace but not at PIPSC gatherings in her experience. It was not in her experience that people used it in an insulting manner on a regular basis. She acknowledged that people may use that word when she is not present.

[482] Mr. Skinner alleged that the EC did not have a quorum during some of its deliberations on the complaints. Ms. Friesen was the first to make a complaint, in June 2013. From June to December 31, 2013, the EC was composed of Mr. Corbett as the president and the vice-presidents, Ms. Daviau, Ms. Bittman, Ms. Friesen, and Mr. Burns.

From January 1, 2014, the EC's composition included Ms. Daviau as the president and the vice-presidents, Ms. Bittman, Ms. Friesen, Mr. Burns, and Mr. Brodeur. In June 2014, Mr. Hindle replaced Mr. Brodeur.

[483] The *Conflict of Interest Policy* (Exhibit 2, tabs 7 and 8) provides that an EC member is required to declare a conflict of interest if the member has a personal or pecuniary interest in a matter being discussed. Of the EC members who served between June 2013 and the complaint being made with the Board, Mr. Corbett and Ms. Friesen declared conflicts of interest from the outset and did not participate in discussions concerning Mr. Skinner's harassment complaint. Mr. Burns declared a conflict of interest later in the process.

[484] The quorum for the EC is 50% plus one, or 3 out of 5 members. A quorum was maintained due to the change in the EC's composition. By the time Mr. Burns declared a conflict of interest, Mr. Corbett had left and had been replaced. Mr. Burns declared it at the EC meeting of March 19, 2014 (Exhibit 2, tab 101, the minutes of that meeting). Ms. Roy said that if the EC did not have a quorum to consider a harassment complaint, according to the BOD's interpretation, the BOD would exercise the EC's role and consider the complaint. Any appeal would then be heard by a third party, as happened in Ms. Bittman's case.

[485] At its meeting in September 2013 (the meeting minutes are at Exhibit 2, tab 47), the BOD rejected Mr. Skinner's argument that the EC was in a conflict of interest because he had supported reducing the number of PIPSC vice-presidents from four to one. Ms. Roy attended the meeting and explained the notions of conflict of interest and bias and referred to the case law for what is required to establish bias by a decision maker, which is that more than broad allegations are needed. The BOD had to decide whether the EC could review the matter with an open mind and make an honest conclusion based on the findings presented to it. Ms. Roy told the BOD that in her view, Mr. Skinner's allegations did not meet the test.

[486] Ms. Roy attended the EC meeting and provided advice on conflict of interest similar to what she had given to the BOD. She would have invited it to reconsider whether it was still of the view that it could consider Mr. Skinner's complaint with an open mind. When she was asked how, in view of the political environment, the EC's members could be prevented from taking into account their history with Mr. Skinner,

Ms. Roy replied that the EC engages in full discussion and debate and is aware of the sensitivity of its decisions. Mr. Burns declared a conflict of interest at the March 19, 2014, EC meeting because of his history with Mr. Skinner. At its September 2013 meeting, the BOD acted on the EC's request that it consider whether the EC was acting properly because the EC felt that it was being accused of many things. Since Mr. Burns and Ms. Friesen had declared conflicts of interest, the remaining EC members were Ms. Daviau, Ms. Bittman, and Mr. Brodeur.

[487] Ms. Roy was referred to her letter to Mr. Skinner of June 24, 2014 (Exhibit 2, tab 71), which contained a sentence starting with, "In order to avoid any perception …", and Mr. Skinner's allegation that that indicated a lack of impartiality. Ms. Roy replied that the perception of a lack of impartiality is not the same as a real lack of impartiality, but at that point, the BOD had heard sufficient allegations of conflict of interest that it wanted to be prudent by referring the complaint to a third party.

[488] Concerning Mr. Skinner's allegation that Ms. Daviau, Ms. Bittman, and Ms. Friesen colluded to intimidate, belittle, and humiliate him and to ruin his reputation as the regional director, Ms. Roy said that nothing she observed in her interactions with the EC or BOD would suggest that that was true. Her reply was the same concerning the suggestion that one or more EC members hated Mr. Skinner.

[489] Ms. Friesen did not participate in any discussion of the complaints against Mr. Skinner, including the Denton complaint. According to the minutes of the EC meeting of September 11, 2014 (Exhibit 2, tab 90), Ms. Friesen and Mr. Burns did not declare a conflict of interest when Mr. Skinner's sensitivity training was discussed. Ms. Roy, who was in attendance, said that there was a brief discussion about whether they should leave the room. It was decided that they need not leave because there was no decision to be made, and it was just a brief status update.

[490] Concerning Mr. Skinner's harassment complaint about Ms. Bittman's comment to Mr. Dickson at a BOD meeting that Mr. Dickson should "wake the f*** up", Ms. Roy said that she would have screened it out. She recalled that Ms. Bittman was joking and that she apologized almost immediately when it was brought to her attention, and no offence had been taken. Mr. Dickson did not indicate that he was willing to pursue a complaint.

[491] With respect to the suggestion that Ms. Noonan was hired as a personal coach for Ms. Daviau, which created a conflict of interest, Ms. Roy said that she inquired about it with Ms. Noonan, who said that she did not act as Ms. Daviau's personal coach. Ms. Noonan did assist the EC in an attempt to mediate disputes among its members, when Ms. Daviau was an EC member, and as a neutral third party involving the Ms. Daviau issue. Ms. Roy said Ms. Daviau had no interest in Mr. Skinner's matter and would have had no impact on Ms. Noonan as a neutral third party.

[492] Ms. Noonan acted as general counsel in 2016 under the new 2014 *Dispute Resolution and Discipline Policy*. In the screening phase, she assisted the Panel of Peers in its deliberations over choosing an investigation. This related to matters involving Ms. Bittman and Mr. Gilkinson. As Ms. Roy was a material witness in those matters, it was inappropriate for her to act as general counsel. Ms. Roy said that two other neutral third parties had been retained in the capacity of general counsel.

[493] Concerning Ms. Daviau's email to all stewards about Mr. Skinner (Exhibit 16), Ms. Roy said that it was not sent to all PIPSC members. She stated that she did not know if the stewards disseminated it. She was asked to draft or review the email before it was sent. The EC's view was that if Mr. Skinner's complaint were made public, so could be the EC's views. After the stewards received the email, PIPSC received several requests that it respond. According to Ms. Roy, Mr. Corbett's email to the BOD of October 20, 2014, seems to confirm that stewards discussed Mr. Skinner's complaint.

[494] Ms. Roy was referred to the minutes of a closed session of the EC meeting of October 22, 2014 (Exhibit 34), and to a reference to a note to all stewards, which she said was Ms. Daviau's email, as mentioned in the previous paragraph. Ms. Roy's email to Ms. Daviau of October 23, 2014 (Exhibit 35), is the draft note to stewards that she prepared with Mr. Gillis for Ms. Daviau's consideration.

[495] In response to Mr. Skinner's allegation that others who had been disciplined and had been asked to apologize were not required to apologize pending the appeal of the discipline, Ms. Roy said that to her knowledge, that was not the case.

[496] Concerning Mr. Skinner's testimony that Mr. Lazzara had successfully persuaded the BOD that the EC had acted arbitrarily, in bad faith, and in a discriminatory manner when it disciplined Mr. Lazzara, Ms. Roy said that she attended

the BOD meeting and that it was not clear whether the BOD upheld the appeal without reasons. She was unable to explain why the BOD decided as it did.

[497] Ms. Roy was referred to Ms. Bittman's testimony that it was not standard practice to receive a letter warning her about her fiduciary duties and that she had not been warned before testifying in Mr. Gilkinson's reconsideration hearing before the Board. Ms. Roy said that such a warning would not be issued in every situation, and Mr. Gilkinson's matter had been very limited. At that time, Ms. Bittman was not quite so entrenched in her issues with PIPSC, and it was not thought necessary to engage her fiduciary duty at that point.

[498] Ms. Roy recommended that Mr. Gillis send the letter to Ms. Bittman because by the time Ms. Bittman was subpoenaed in this matter, she had taken a fairly aggressive position against PIPSC in her proceedings. Ms. Roy felt that there was a risk that Ms. Bittman might testify in a manner unduly critical against PIPSC and use her testimony to air her grievances. She was troubled that Ms. Bittman refused to meet with the PIPSC counsel of record, which was not the usual process, and said that she was seeking legal counsel for herself, which was also not the usual process. Ms. Roy mentioned that two other BOD members were reminded of their fiduciary duties before testifying — Mr. Brodeur and Mr. Gray.

[499] Although Mr. Skinner alleged that he was entitled to be consulted in the drafting of the terms of reference for his appeal, Ms. Roy said that that is not and has not been a requirement of PIPSC policy. Nevertheless, she gave him the opportunity to provide input.

[500] Ms. Roy said there had been another incident involving Ms. Bittman as the respondent in which the BOD instead of the EC had asked a third party to assume the appellate role under the *Dispute Resolution and Discipline Policy*. There have been others since the case involving Mr. Skinner. In the matters of which she was aware, the appellants did not have a role in drafting the terms of reference.

[501] Ms. Roy was referred to the emails of July 7 to 9, 2014, concerning Ms. Noonan's mandate (Exhibit 2, tab 78). One was from Ms. Roy to Mr. Skinner and Mr. Tait, which indicated that Ms. Roy was open to comments from them. She stated that this was not standard practice and that she had hoped that Mr. Skinner's participation would make him more comfortable with the outcome and give him faith in the process. In her email

of July 8, 2014, she refused Mr. Tait's request to include certain documents because PIPSC wanted its policy to be respected as much as possible.

[502] In response to Mr. Skinner's allegation that the mandate of the neutral third party had been overly limited, as she could not consider his allegations of conflict of interest and bias, Ms. Roy said that the third party's mandate was identical to the BOD's mandate set out at Part D of the 2009 *Dispute Resolution and Discipline Policy*. The BOD's mandate was limited to determining whether the EC had acted within its mandate, as set out in Part C, at the second paragraph. The mandate letter (Exhibit 2, tab 79) incorporates Parts C and D.

[503] In emails of July 10 and 11, 2014, between Mr. Tait, Ms. Noonan, and Ms. Roy concerning the mandate and conflict of interest (Exhibit 2, tab 76), the use of the word "coached" in Ms. Noonan's email to Ms. Roy refers to Ms. Noonan acting on behalf of PIPSC by coaching EC members in their interpersonal relationships. She had not been retained by Ms. Daviau as an individual coach.

[504] With respect to Mr. Skinner's allegation that the discipline imposed on him ought to have been placed in abeyance pending his appeal, Ms. Roy said that that was never the case and that when discipline was imposed, it was applied immediately, despite an appeal.

[505] Mr. Skinner alleged that a breach of confidentiality occurred because the final investigation report was posted on the Virtual Binder, which could be accessed by BOD members. Ms. Roy did not believe that it was such a breach but understood that Mr. Skinner had that perception in 2014. The Virtual Binder is an online document available only to BOD members. Accessing it requires a username and password. It contains all information that BOD members need to attend monthly meetings, such as briefing notes, reports, and minutes. In 2014, PIPSC studied how to communicate voluminous documents, such as investigation reports, early enough so that BOD members could review them without the ability to disseminate them further. The investigation report related to Mr. Skinner was put on the Virtual Binder but was removed once Mr. Skinner expressed his concerns with that.

[506] Mr. Skinner alleged that PIPSC breached confidentiality when it advised the constituent bodies about the discipline. Ms. Roy said that PIPSC has 300 constituent bodies and that it did not communicate with all of them. PIPSC communicates only

measures to be implemented, such as discipline, to those bodies that are required to implement them, as was done in Mr. Skinner's case.

[507] When she was asked why she sent a letter about Mr. Skinner's discipline to Mr. Millage (Exhibit 2, tab 126), Ms. Roy replied that he was responsible for directing staff tasked with planning a number of activities for different PIPSC groups. Since Mr. Skinner was restricted from participating in PIPSC activities, as set out in the letter, it was felt that the staff responsible for planning those activities ought to be aware so that they would not authorize travel for Mr. Skinner for activities prohibited by that letter.

[508] Ms. Roy did not recall being asked for advice about the October 17, 2013, meeting of the BC/Yukon Regional Executive other than Ms. Aschacher's email of October 4, 2013 (Exhibit 1, tab 12); nor did she recall being asked for advice concerning attendance at the hospitality suite.

[509] Ms. Roy was referred to Mr. Skinner's allegation that Mr. Brodeur should not have been allowed to remain a BOD member for the period during which he was bankrupt. Mr. Brodeur was never removed as a director as his bankruptcy was annulled. Only 48 hours elapsed from the time that PIPSC learned of Mr. Brodeur's bankruptcy to the annulment. Mr. Skinner's complaint alleges that PIPSC should have removed Mr. Brodeur on the day it learned that he was bankrupt. Ms. Roy said that the *Canada Not-for-profit Corporations Act* states that decisions are not null and void because a director is unqualified under that Act. Ms. Roy's view was that Mr. Brodeur was not unqualified, because the bankruptcy was annulled. Ms. Roy said that Mr. Brodeur's sole source of income was being a PIPSC director and that terminating him was a risk. The bankruptcy had nothing to do with Mr. Skinner.

[510] Ms. Roy referred to a final investigation report into a complaint made by Mr. Brodeur against a fellow director, Peter Taticek (Exhibit 37), alleging that Mr. Taticek had sent a defamatory email, in violation of PIPSC's *Harassment Policy*. The complaint was handled under the current *Dispute Resolution and Discipline Policy*, which differed from the one that was in force when Mr. Skinner was disciplined. The investigation report was provided to the Panel of Peers, which accepted all the findings that concluded Mr. Taticek had engaged in misconduct. It sought to remove Mr. Taticek from the BOD for the remainder of his term, which was to expire in 2018. A special

general meeting must be held to remove a director. Before that meeting was held, under the 2014 policy, Mr. Taticek exercised his right to appeal directly to a neutral third party not sitting as a substitute of the BOD. Under the current policy, the neutral third party determines how the appeal will be handled, either by written submissions or at a full hearing. The neutral third party dismissed Mr. Taticek's appeal. At the special general meeting, the delegates voted against Mr. Taticek's removal from the BOD.

[511] When Ms. Roy was referred to a chronology of events with respect to the Friesen, Mertler, and Denton complaints (Exhibit 19, fourth page) that had been presented to the CRA, she said that she had never seen it and that she did not know who had drafted it or had provided it to the CRA. It was not referred to in the investigation report of the Friesen complaint.

[512] Ms. Roy was referred to an entry in the chronology that refers to a June 19, 2013, email sent by Mr. Skinner to Sara Carvalho, special assistant to the Office of the General Counsel (Exhibit 2, tab 18). In it, Mr. Skinner advises Ms. Carvalho that he will respond to the complaint against him and that he will make a complaint against Ms. Friesen. Ms. Roy said that the only person who had access to the email was Ms. Carvalho. When PIPSC saw this entry, it inquired of its information technology (IT) services as to who might have accessed it. There was no trail of the email having been sent or accessed by any other means that could be investigated. When she was asked for her theory as to how the information could have been obtained by the CRA, Ms. Roy replied that in the past, PIPSC had been approached by members employed by the CRA, who stated that the CRA could access information sent using its equipment, even if it was sent using a PIPSC email address.

[513] Mr. Welchner then stated that during the hearing, Mr. Skinner had provided him with an electronic copy of his access to information and privacy (ATIP) file obtained from the CRA for review but not disclosure. Mr. Welchner wished to ask Ms. Roy about four examples of emails sent by PIPSC members, who were CRA employees, using their personal email addresses. Mr. Skinner did not object. The first email, dated October 24, 2014, discussed Mr. Skinner's attendance at the Steward Council. The next three emails, two of which are dated October 29, 2014, and the third November 4, 2014, have Mr. Skinner's complaint to the Board attached, as well as

PIPSC's reply. Ms. Roy said that they would not have been part of PIPSC's investigation given the dates and the description of them. She had no recollection of them.

b. Cross-examination

[514] Ms. Roy acknowledged that she was offended by the comment that in her role as general counsel, she had tinkered with the investigation report. She was aware that Mr. Skinner had raised concerns that the EC and PIPSC's legal counsel were in a conflict of interest relating to bias and the apprehension of bias and that he would not receive a fair hearing. Ms. Roy was referred to emails sent to PIPSC by his representative at the time, Mr. Fernando, on August 1 and October 13, 2013, indicating that the EC was aware of Mr. Skinner's concerns about the general counsel. She said that Mr. Fernando's August 1 email did not mention her office.

[515] Ms. Roy was referred to Ms. Daviau's email to all stewards sent in mid-October 2014 (Exhibit 16) and was asked whether it was sent publicly in retaliation for Mr. Skinner making a complaint against PIPSC. Ms. Roy replied there was nothing punitive in the email. When they make complaints to public bodies, complainants enter the public realm. They make their complaints publicly, and respondents are entitled to defend themselves.

[516] When she was asked if sending the email indicated to the stewards that by making a complaint with the Board, everyone would know and there would be consequences, Ms. Roy disagreed. She said that Ms. Daviau took the opportunity to clarify that certain individuals had made complaints containing serious allegations against PIPSC, which would defend itself, and she invited members who sought further details to make inquiries. Ms. Daviau had concluded the email by stating that defending members' rights is important.

[517] Ms. Roy could not recall any other instance of a complaint to the Board in which PIPSC's president sent such an email. She could not recall that members would have been concerned previously about such complaints.

[518] Ms. Roy said that under the 2009 *Dispute Resolution and Discipline Policy*, the general counsel's role is to recommend that the EC dismiss a complaint if it is frivolous, vexatious, or without merit. This would be done through briefing notes. Under the 2009 policy, Ms. Roy received a complaint and made a recommendation to

the EC. The EC was the decision maker, and she would implement its decision. It was not a consultative process. The current policy has a consultative notion to it.

[519] Ms. Roy was asked whether the investigator's mandate for the Friesen complaint (Exhibit 2, tab 12) specified the investigation of bad behaviour if harassment was not found. She replied that the mandate asked the investigator to investigate all allegations made by the parties, make findings of fact, and make a legal determination as to whether the *Harassment Policy* had been breached by any of the parties. Ms. Roy acknowledged that the mandate did not specifically state that bad behaviour would be investigated if there was no finding of harassment.

[520] When Ms. Roy receives a final investigation report at her office, it is reviewed so that an executive summary can be prepared, if the investigator has not provided one. Her office then informs the EC of the report and accompanies that with a briefing note (for the Denton complaint, see Exhibit 2, tab 54).

[521] Ms. Roy was asked whether, when reviewing the Denton final report and looking at the initial allegations of the denial of entry to the hospitality suite, anyone in her office questioned whether Mr. Skinner had been charged with something that he had not been accused of. She replied that the investigator's conclusions raised no alarms. The reasoning set out at pages 61 and 62 of the Denton final report was sufficiently clear.

[522] Ms. Roy said that her office reviews investigation reports to determine if they are within the investigators' mandates. Her office does not judge the reports or look for flaws. If there is nothing untoward with a report, it is shared with the EC, which decides whether to accept or reject it. A briefing note is not intended to replace a report. In Ms. Roy's experience, EC members review reports when they deliberate over them.

[523] When she was asked whether Mr. Brodeur read the Denton preliminary report and the related documents, Ms. Roy replied that all documents were provided to the EC and that at that time, they were not translated. Based on her observation, Mr. Brodeur understood the materials and was able to participate in the discussion.

[524] When she was asked whether briefing notes to the EC carry some weight, Ms. Roy said that it depends, as they normally contain information indicating whether

action is required. For an investigation report, the briefing note does not carry much weight; the report does.

[525] Ms. Roy was referred to the letter of April 28, 2014, informing Mr. Skinner of the corrective measures imposed on him (Exhibit 2, tab 56) and stating that he had engaged in retaliation against Ms. Denton. When she was asked what incident brought the EC to that conclusion, Ms. Roy replied that the indented section of the letter summarized the investigator's conclusions concerning retaliation. That alone did not lead the EC to impose discipline; it was the report as a whole.

[526] With respect to the finding that Ms. Denton was denied a benefit available to other BC/Yukon Regional Executive members, Ms. Roy was asked whether any of the other members were provided a benefit not extended to Ms. Denton. She said that the issue was not that nobody benefitted from a hospitality suite but rather that in the presence of a group of people, Mr. Skinner singled out Ms. Denton and suggested that people who make complaints against him should not participate in such things as hospitality suites. The fact that the hospitality suite was cancelled for everyone did not negate Mr. Skinner's intimidation.

[527] Ms. Roy stated that there was no investigation into the two 2012 letters issued to Mr. Skinner by Mr. Corbett in Messrs. Auguste's and Jones's complaints (Exhibit 2, tabs 57 and 58). She agreed that those letters were not disciplinary but that they were intended for Mr. Skinner's self-improvement. She did not recall being made aware of any conversation between Mr. Skinner and Mr. Corbett that if the letters were disciplinary, Mr. Skinner wanted an investigation.

[528] Ms. Roy stated that those letters were for self-improvement and that the EC was concerned about the tone of written communications. The letters to Mr. Skinner dealt with the tone of his communications, such as a lack of professionalism and courtesy, and the three investigation reports mentioned that tone. The letters did not contain any warning that they would be used in the future if Mr. Skinner did not improve. They did not contain any statement that PIPSC would provide him with training seminars or other material to ensure that his behaviour was corrected. The letter of October 24, 2012, invited him to contact Mr. Corbett if he had any questions. Ms. Roy said that in its letter of discipline of April 28, 2014, PIPSC did require Mr. Skinner to

take training, but he did not comply. Ms. Roy said that PIPSC did not offer training to him before issuing the letter of discipline.

[529] Ms. Roy was referred to Mr. Tait's email to her of August 2014 (Exhibit 2, tab 89), stating that it was not acceptable that Mr. Skinner was required to see a psychologist one-on-one who would report to the EC and proposing an alternative training option. Ms. Roy acknowledged that the email chain indicated that Mr. Skinner was willing to take sensitivity training. She said that PIPSC was willing to accept that the proposal met its requirements (Exhibit 2, tab 89) and requested that Mr. Skinner provide his availabilities so that registration and payment could be arranged. Mr. Skinner did not follow through.

[530] When it was put to her that Mr. Skinner did not take sensitivity training in April 2014 due to ongoing discussions about his concern about seeing a psychologist, Ms. Roy replied that the issue was not that he did not take training in April but that he did not take it at all. Ms. Roy did not understand where that concern arose, as her letter to Mr. Skinner of August 20, 2014 (Exhibit 2, tab 88), did not contain a requirement that the person be a psychologist. She had several discussions with Mr. Tait and Mr. Skinner and recalled that there was always an openness to consider options that Mr. Skinner was prepared to accept.

[531] Ms. Roy was referred to the minutes of the EC meetings of June 18, 2013 (Exhibit 2, tab 16), and July 3, 2013 (Exhibit 2, tab 20). It was put to her that with respect to the June 18 meeting, she had allegedly said that its purpose was to determine if discipline would apply and then to proceed to the investigation. She replied that that was wrong and that Part C of the 2009 *Dispute Resolution and Discipline Policy* states that PIPSC will not impose discipline unless an investigation has been conducted. Part B states that when the EC is faced with a complaint, it must decide on a course of action. The EC must ask itself if the complaint could potentially lead to discipline, and if so, an investigation must be carried out. If at that initial stage, the EC is of the view that even if the complaint is founded, it will not lead to discipline, it does not have to be referred to investigation. However, if there is any risk that the complaint might lead to discipline, the EC must carry out an investigation.

[532] When she was asked why the minutes of the June 18 meeting state in relation to Mr. Skinner that "… we have a repeat offender who harassed people …", Ms. Roy

replied that she did not know why that language was included. She had left the meeting by then. She did not recall whether she had reviewed the minutes. The EC did not ask her to investigate if Mr. Skinner was a "repeat offender who harassed people". When she was asked if the EC provided her with additional situations concerning Mr. Skinner, she recalled that she was informed that alternative dispute resolution would be explored.

[533] Ms. Roy was referred to the July 3 meeting minutes, which note that there were "numerous harassment situations" (Exhibit 2, tab 20, Appendix A, paragraph 7). She was asked if she was aware of those situations. She replied that she was aware of the two harassment complaints that were dismissed and that led to the self-improvement letters to Mr. Skinner. She had no knowledge of any founded harassment complaints against Mr. Skinner before the three at issue. She did not know why the minutes contain the phrase, "need to show" (Exhibit 2, tab 20, paragraph 4), since there were no founded complaints against Mr. Skinner. Her response was the same in relation to the phrase, "It was noted that members of BC …". She said that the minutes appear to document comments that were made and said that she did not know their source.

[534] Ms. Roy said that it was never an issue that Mr. Skinner was an effective union activist and a BOD member carrying out excellent work on behalf of members, which was referenced in the investigation reports. She said that were it not for his valued contribution, the discipline might have been harsher. The two self-improvement letters concerned the EC enough that it felt that it had to say something. Then, the three harassment complaints were made, two of which were dismissed because the finding of inappropriate conduct did not rise to the level of harassment. The third complaint found that harassment by retaliation had occurred. When faced with it, the EC had to make a decision. It did not seek to expel Mr. Skinner from membership and did not suspend him. It asked him to take sensitivity training so that it could be comfortable that he could carry on with his work. People in volunteer positions should not have to put up with harassment.

[535] With respect to the self-improvement letters being referred to in the letter of discipline, Ms. Roy said that the EC made a finding of misconduct based on the Denton final report. The next step was to determine a corrective measure, the goal of which was to correct behaviour, not punish. It was logical and appropriate for the EC to take into account the information it had on hand to craft an appropriate remedy, which was

requiring Mr. Skinner to take training. After he received the self-improvement letters, it was open to Mr. Skinner to ask for training at any time.

[536] Ms. Roy was referred to Part B of the 2009 *Dispute Resolution and Discipline Policy* and was asked what documents, standards, guiding principles, and authority she uses to determine that a complaint is frivolous, vexatious, or without merit. She replied that at the intake stage, she deals with the complaint and any supporting documents. The case law defines the concepts of frivolous, vexatious, and being without merit. The custom under this policy was that Ms. Roy would prepare a briefing note to the EC setting out her recommendations and the reasons behind them.

[537] Ms. Roy was then asked what documents, standards, guiding principles, and authority she relies on when recommending an appropriate course of action under the second paragraph of Part B of that policy, which tasks the general counsel with recommending one. She replied that at this stage, a written response would be considered. She must be mindful of the policy's requirement, particularly that discipline can be applied only if there has been an investigation. The point that can consistently be made to the EC is that if there is potential discipline, the appropriate course of action is an investigation. At the intake stage, there is no appeal process for the determination of whether a complaint should be screened in.

[538] When she was asked what documents, standards, guiding principles, and authority she uses to review a final investigation report, Ms. Roy replied that she reviews the investigator's mandate, the complaint, the response, any counter-complaint, and the entire investigation report, as well as any comments on the preliminary report to ensure that they were addressed in the final report.

[539] When she was asked whether she or any of her legal staff read the case law referred to in the Denton final report, Ms. Roy recalled that she had read the case law about retaliation. She was then asked whether based on her reading of the case law, she agreed with Ms. Price's interpretation of *Cassidy v. Canada Post Corporation*, 2012 CHRT 29, which she cited with respect to the issue of intention in retaliation cases. Ms. Roy replied that in *Cassidy*, the Canadian Human Rights Tribunal (CHRT) stated more than what was set out in the Denton final report and that there was no inaccuracy in how it was portrayed in the report. When it was put to Ms. Roy that in *Cassidy*, the CHRT did not believe the respondent because his story continually

changed, and she was asked whether that would make a difference, she replied that the investigator had to assess credibility, not her.

[540] Concerning her testimony that the CRA hires external investigators, Ms. Roy said that she has seen cases in which external investigators were hired with respect to harassment complaints at the CRA.

[541] Ms. Roy said that it might be appropriate to discuss harassment complaints at a BOD meeting depending on the policy at issue and the stage of the process. An ongoing investigation would not typically be discussed unless it was a question of process or timing. Depending on the circumstances, the names of the complainants might be mentioned.

[542] Ms. Roy agreed with the general statement that at any meeting, of either the BOD or the regional executive, at which statements may be made about hospitality events or resolutions to present to PIPSC or to the AGM, those statements are considered an expression of opinion with which other reasonable people may or may not agree.

[543] When it was put to Ms. Roy that Mr. Skinner's statement that complainants were not allowed in the hospitality suite was an expression of opinion that others could vote on and either agree or disagree with, she replied that to the extent that it was Mr. Skinner's view, he was entitled to it.

[544] Ms. Roy acknowledged that PIPSC did not have a foul-language policy.

[545] She acknowledged that in the past, Ms. Noonan had been hired for "conflict coaching" in that she had been hired to deal with difficult relationships on the EC. There was also an issue with members of the management committee, and a complaint had been made against Ms. Daviau. Ms. Noonan acted as a neutral third party in that process. Ms. Roy was aware that Dan Quigley had been engaged as a neutral third party to assist the BOD with its relationships. Over the years, other experts were brought in to try to deal with ongoing challenges to changing the BOD.

[546] Concerning hospitality suites, Ms. Roy said that they are fairly common at PIPSC events and that it is customary to hold them in conjunction with the Steward Council meeting. The Regional Executive, with the assistance of the PIPSC's Regional Office, is responsible for arranging and planning the Steward Council, including the hospitality

suite. With respect to the health and safety of participants, generally, PIPSC is concerned about members' health at all activities. When she was asked if she expected that a hospitality suite that could contain only 10 people with 1 bathroom would be discussed by the Regional Executive, Ms. Roy said that she did not know the level of detail the Regional Executive discusses when planning a Regional Council meeting. Perhaps the regional director simply has a discussion with regional staff to find another location. She agreed that it would be prudent for the Regional Executive to discuss hospitality suites.

[547] In reference to the Mertler incident, when she was asked whether a leader who is concerned about someone sleeping or nodding off should take action, Ms. Roy responded that it had not involved an employment context. Ms. Mertler was a volunteer, not an employee, and Mr. Skinner was not her supervisor. If an employee was sleeping on the job, while it would be appropriate for a supervisor to act, it would be inappropriate to tell that employee to "wake the f*** up."

[548] With respect to the standard guidelines for investigations adopted in 2016, Ms. Roy did not believe that respondents were prevented from obtaining witness statements in the context of an investigation into a harassment complaint.

[549] Concerning the annulment of Mr. Brodeur's bankruptcy, Ms. Roy said that she was advised by bankruptcy counsel that it applied retroactively, as if the bankruptcy had never existed.

[550] Ms. Roy was referred to her testimony stating that the purpose of the disciplinary letter was not to punish Mr. Skinner but to put him on the right track because of his positive qualities and was asked whether that reflected her opinion. She replied that she testified to what she observed to the extent that she was present during the EC's deliberations. She drafted the letter at the EC's request.

[551] Ms. Roy agreed that when the EC discussed disciplinary action against Mr. Skinner, on a few occasions, she had to bring it back to focus on the investigation reports before it. When she was asked whether that indicated that EC members were not listening to her, Ms. Roy said that she observed that they accepted her advice to the extent that they refocused their discussion, and if they accepted the conclusions of the investigation reports, they could apply proportional discipline.

c. Re-examination

[552] In reference to her testimony that the EC took into account Mr. Skinner's positive qualities, Ms. Roy said that during the deliberations about discipline, she observed that a few comments were made, probably by Ms. Daviau, about how unfortunate it was that they were in that position because Mr. Skinner was doing good work on behalf of members. Nobody took issue with that notion.

2. Mr. Gillis

a. Examination-in-chief

[553] Mr. Gillis has been employed by PIPSC for 25 years and has occupied his current COO and executive secretary position for 8 years. Before that, he was the executive secretary for 10 years. As the COO, he is the senior staff member responsible for all 170 PIPSC employees and for implementing the BOD's strategic objectives. As the executive secretary, he works closely with the BOD in all its operations and as the corporate secretary. Having occupied those positions, he would have attended almost all BOD meetings for the last 18 years.

[554] Mr. Gillis testified that he has very rarely observed the use of foul language by BOD members at their meetings. In reference to Mr. Skinner's testimony that he has heard everyone he knows at PIPSC constantly use the F-word, Mr. Gillis said that that was not his experience. When he heard it used by PIPSC people, it was very rarely used in an insulting manner.

[555] Mr. Gillis was asked to respond to Mr. Skinner's testimony concerning the additional allegations against him made by Ms. Denton. She alleged that he had retaliated against her that he believed that during the investigation, it was Mr. Gillis's responsibility to determine whether the October BC/Yukon Regional Executive meeting minutes had been posted and whether those minutes indicated if the hospitality suite had been cancelled. Mr. Gillis replied that the investigator would have been responsible for determining those issues and that he would have had no dealings with minutes or hospitality suites. He has no role in the context of harassment investigations carried out by an external investigator.

[556] With respect to Mr. Skinner's argument that following the letter of discipline, he should have been allowed to attend a Steward Council meeting as a steward in good standing, Mr. Gillis said that the letter set out that Mr. Skinner's activities would be

limited to particular duties directly related to his director role. That did not include attending a Steward Council meeting as a steward.

[557] Concerning Mr. Skinner's argument that subsequent to the discipline, he should have been permitted to attend meetings in which groups wanted to honour him for his retirement, Mr. Gillis said that those meetings would have fallen under the same restrictions as, for example, the Steward Council. Had Mr. Skinner complied with the discipline, he would have been free to attend.

[558] Mr. Gillis was referred to a document concerning the AGM of the Vancouver CRA branch in February 2015 (Exhibit 1, tab 18) and indicating that Mr. Skinner would be recognized at the meeting, to a letter from Ms. Roy to Mr. Skinner on February 9, 2015, informing him that he could not attend the AGM, and to a letter from Mr. Gillis to Simon Chiu, Vice-President, Vancouver CRA branch. Mr. Gillis wrote to Mr. Chiu to advise him that having Mr. Skinner at that meeting would be a deliberate contravention of a BOD direction and that should the Vancouver CRA branch proceed, it risked certain consequences. Mr. Gillis knew that Mr. Skinner attended the meeting and that he spoke at it.

[559] When he was referred to Mr. Skinner's testimony that PIPSC could have designated an employment relations officer instead of Mr. Hindle to observe meetings, Mr. Gillis replied that it had been a very political situation into which he would not have allowed one of his staff to be placed.

[560] Concerning Mr. Skinner's allegation that PIPSC's posting of the final investigation reports on the Virtual Binder was a breach of confidentiality, Mr. Gillis said that those documents were accessible by the BOD, and the BOD had a responsibility to keep them confidential outside the BOD. It was PIPSC's practice not to post such documents electronically, although there was no requirement not to. As it had inadvertently deviated from the practice, the BOD asked Mr. Gillis to apologize to Mr. Skinner.

[561] Mr. Gillis disagreed with Mr. Skinner's allegation that PIPSC breached confidentiality by advising subordinate bodies about his discipline and about a complaint against him that had been determined founded. He stated that it provided the information on a strictly need-to-know basis to enact the discipline and that it provided the minimal information it had determined was necessary.

[562] Mr. Gillis had no knowledge of Mr. Skinner's allegation that following his discipline, his travel was being monitored. However, he said that it was likely that PIPSC's finance department was made aware of the restriction on Mr. Skinner's activities so as not to issue authorities for travel that was not permitted.

[563] Mr. Gillis was referred to Mr. Skinner's allegation that PIPSC ignored requests for a committee selection by the BC/Yukon region. Mr. Gillis said that PIPSC has approximately 10 standing committees. Each committee chair proposes the committee's membership, which the BOD discusses. There may be amendments to the recommendation. The BOD votes on each committee in turn. A region has no right to choose committee members. The regional director from each region submits the region's recommendations to the committee chair. The committee chair will consider those recommendations but has the right to propose the membership.

[564] Mr. Gillis attended the BOD meeting of February 21 and 22, 2014. At no time before or during the meeting did he observe any conduct that could support the allegation that one or more BOD members attempted to penalize or discriminate against Mr. Skinner or the BC/Yukon region in selecting committee members. The BOD committee policy was followed in the normal manner, as he described.

[565] Concerning Mr. Skinner's allegation that Ms. Friesen and Mr. Burns interfered with the selection of the Finance Committee member from the BC/Yukon region, Mr. Gillis did not witness any. It is common for BOD members to discuss the selection of committee members, but doing so is not interference.

[566] Mr. Gillis was referred to Mr. Skinner's allegation that on the EC's urging, the BOD rewarded Ms. Denton and Ms. Mertler by appointing them to a committee, even though they were not recommended by the region. Mr. Gillis said that that is not how it works. Those members might have been recommended by the committee chair, or they could have been proposed by a BOD member instead of another recommendation. If there is a change to the committee chair's recommendation, the BOD will vote on it. Once all such changes have been discussed, the BOD takes a final vote on committee membership as a whole. The EC would have no ability to do what the allegation suggests.

[567] Mr. Gillis was reminded that Mr. Skinner had also alleged that when the BOD made its selection in early 2014, every region other than BC/Yukon had its

recommendations accepted, which demonstrated discrimination against that region. He replied that it would be very unusual for every region to have every one of its recommendations accepted. In 2014, he knew of at least one other regional recommendation that the BOD did not accept, namely, the National Capital Region's recommendation for the Professional Recognition and Qualification Committee.

[568] In a letter dated March 17, 2014, to each member of the BC/Yukon Regional Executive (Exhibit 2, tab 128), Mr. Gillis outlined the BOD's decision to freeze regional funding until the Regional Executive retracted the letters that it had apparently distributed about the selection process for members of the BOD's standing committees (Exhibit 1, tab 12). On April 4, 2014, the BC/Yukon Regional Executive wrote to the BOD (Exhibit 2, tab 129). It formally retracted its earlier letters and admitted that in fact, no political interference had occurred. The letter also retracted earlier comments on the suitability of candidates. Mr. Gillis said that the letter of retraction was accepted by the BOD as being in compliance with its direction set out in the March 17 letter.

[569] Mr. Gillis disagreed with the allegation that the BOD's decision to freeze funding for the BC/Yukon region was motivated by hatred for Mr. Skinner. It was not about Mr. Skinner. The BOD was concerned that the BC/Yukon Regional Executive was misrepresenting facts, calling the BOD into question, and attacking individual BOD members.

[570] Mr. Gillis was referred to his letter to Ms. Bittman dated April 13, 2017, reminding her of her fiduciary duty and stating that PIPSC would not pay her lawyer's fees. He was also referred to Ms. Bittman's testimony that only the BOD had the authority to deny her legal fees. Mr. Gillis explained that Ms. Bittman had said that she would testify against PIPSC's interests, despite the fact that she was a director. The letter was to advise her that PIPSC had retained counsel and that she should consult with that counsel to understand PIPSC's position, as was her fiduciary responsibility.

[571] Mr. Gillis said that PIPSC's long-standing position is that it does not pay legal costs unless it is approved in advance. It would not have done so in this case. With respect to Ms. Bittman's testimony that only the BOD had the authority to deny her legal fees, Mr. Gillis said that she could have challenged that position before the BOD, but she did not.

[572] Mr. Gillis was asked to respond to Mr. Skinner's testimony that he attended a Steward Council meeting in 2014 at which he saw Mr. MacDonald handing out election material and that Mr. Gillis had allowed an election breach to occur and did not intervene. Mr. Gillis said that neither statement was true. He did not see Mr. MacDonald distribute literature. Mr. Gillis was approached by a member who was concerned about Mr. MacDonald distributing literature. He found Mr. MacDonald outside the meeting room. It was the first time he had met him. Mr. MacDonald had pamphlets displayed on a table outside the room. Mr. Gillis identified himself and advised Mr. MacDonald that election procedures did not permit him to distribute the information at that meeting. He further advised Mr. MacDonald that if a member chose to make an election complaint, he would have to respond. Mr. MacDonald said that he was not aware of that rule. He gathered his pamphlets and did not distribute them any further. Mr. Gillis does not have the authority to direct members, but he intervened to provide advice.

[573] Mr. Gillis confirmed that a full-time vice-president is permitted to use letterhead from the president's office because the vice-president is part of that office.

[574] According to Mr. Gillis, a retired member of PIPSC can hold office and vote in PIPSC elections. In Mr. Skinner's case, his status as a retired CRA employee would be irrelevant. As long as he was a PIPSC member, the disciplinary sanctions would remain in place, and he could not attend PIPSC events to which he was invited until he complied with the sanctions.

b. Cross-examination

[575] Mr. Gillis attended the January 2017 BOD meeting. It was suggested that it was a contentious meeting. When he was asked whether he heard any foul language, he replied that one director had been quite upset. When it was put to him that foul language was used 10 times at that meeting, he said that he would be surprised and that he did not recall that frequency of use.

[576] Mr. Gillis was referred to the notice of the 14th AGM of the Vancouver CRA Branch (Exhibit 1, tab 18, eighth page) and denied the suggestion that it showed that the executive of that branch complied with his request that Mr. Skinner not attend. Mr. Gillis said that his letter to Mr. Chiu of October 2, 2015 (Exhibit 1, tab 18), set out PIPSC's view of the actions of the branch executive.

[577] It was put to Mr. Gillis that the AGM was a political event and a stressful situation because Mr. Skinner had created that branch and was well known, and if the executive denied entrance to him, there could have been an altercation. Mr. Gillis said that Mr. Skinner chose to refuse to abide by the disciplinary action by going to that meeting. If there was any stress or altercation, it was caused by him. It was then put to Mr. Gillis that had there been an altercation, the branch executive would have borne the brunt of it and would have been placed in a precarious position. Mr. Gillis replied that the question presumed that Mr. Skinner would have caused an altercation. Had he been willing to do that to his executive colleagues, then they would have been in a precarious situation.

[578] When he was asked whether PIPSC considered hiring Mr. Burns, Ms. Friesen, the police, or the hotel staff to help the executive bar Mr. Skinner from attending the AGM, Mr. Gillis replied that it expected that as a director, Mr. Skinner would comply with the BOD's direction. It did not expect that he would present himself at the meeting, contrary to the BOD's clear direction to him and all members of the executive. He said that PIPSC does not provide a police presence or a sergeant-at-arms for its meetings and that as a professional organization, it expects professional conduct. It did advise the executive that should Mr. Skinner cause a disturbance if he attended, it should ask the hotel staff to escort him out. In addition, PIPSC sent a senior elected official to monitor the meeting.

[579] It was suggested that Mr. Gillis would have put the branch executive, which consists of volunteers, in a dangerous position had the executive asked the hotel staff to escort Mr. Skinner out, when 100 delegates wanted him present. Mr. Gillis disagreed and said that PIPSC did not consider Mr. Skinner dangerous. Furthermore, it had had no indication that anyone other than Mr. Chiu was interested in Mr. Skinner's attendance.

[580] Mr. Gillis's letter to Mr. Chiu of October 2, 2015 (Exhibit 1, tab 18), referred to a vote on a motion put forward by a member to have Mr. Skinner speak at the meeting. Mr. Gillis said that his reference in his letter was that there was no evidence that the branch executive had attempted to prevent Mr. Skinner from attending the meeting, in contravention of the BOD's direction. That is, no effort was made to prevent Mr. Skinner's attendance, and no effort was made to rule the motion out of order, which would have been the appropriate course of action to take.

[581] Mr. Gillis said that the branch is a subordinate body of PIPSC and that all subordinate bodies are required to take direction from the national organization. The branch was in charge of the meeting and could easily have ruled that motion out of order. It chose not to, which became an aggravating factor in the BOD's decision that the executive deliberately ignored its direction. Mr. Gillis said the Vancouver CRA branch executive is not bound by resolutions passed at its AGM if they result in a violation of by-laws, policies, or a direction from a higher body.

[582] It was put to Mr. Gillis that he was blaming Mr. Skinner and the branch executive, which had asked for assistance, so that if violence or an altercation had occurred, it would have been his problem. Mr. Gillis replied that as PIPSC had no reason to believe that Mr. Skinner was violent, it had no legal basis for a concern about the physical well-being of its members. It is a normal part of democratically run meetings that the chair will assure decorum and take the necessary steps to deal with situations that might arise. PIPSC would not expect its members to descend into a physical altercation and would expect its elected executives to maintain order.

[583] It was then put to Mr. Gillis that to maintain order, the branch executive determined that it was in everyone's best interests for Mr. Skinner to speak and that as volunteers, the branch executive made the best decision possible with the available information. Mr. Gillis replied that the branch executive was advised in writing of the BOD's direction and that if it failed to comply, there could be consequences. Instead of complying, the branch executive facilitated a vote to achieve the desired outcome. By doing so, it is not appropriate to say that the members wanted that and to rely on that as an excuse. The branch executive had multiple opportunities to manage the process and chose not to.

[584] Mr. Gillis agreed that the branch executive took action by uninviting Mr. Skinner. When he was asked whether it also took action by requesting assistance barring Mr. Skinner from the meeting, Mr. Gillis replied that it asked for a police presence at the meeting, with which PIPSC disagreed. When it was put to him that the executive asked for a sergeant-at-arms to prevent Mr. Skinner from entering because it was concerned, Mr. Gillis replied that he was not aware it was afraid of Mr. Skinner. The email from Mr. Chiu of February 23, 2015 (Exhibit 1, tab 18), indicated concern about legal liability should Mr. Skinner be barred from attending. Mr. Gillis said that the

concern was unfounded because any legal liability would have fallen on PIPSC as an organization, not on volunteers in a subordinate body.

[585] Concerning posting investigation reports on the Virtual Binder, Mr. Gillis said that it is secure and accessible only to BOD members when investigation reports are not confidential. Directors are responsible for keeping confidential investigation reports that are put in the Virtual Binder, and PIPSC makes every effort to safeguard their confidentiality.

[586] PIPSC notified individuals, on a need-to-know basis, of the restrictions placed on Mr. Skinner only to the extent necessary to give effect to the BOD's decision. When he was asked whether PIPSC would inform individuals on a need-to-know basis that a conflict might arise at a meeting, Mr. Gillis replied that it would have a duty to act if there were evidence of imminent harm but that tension is part of the democratic process.

[587] Mr. Gillis was then asked whether if the potential for a conflict at a meeting was higher than normal, would PIPSC inform those involved on a need-to-know basis on some evidence of the likelihood of harm, to stop the conflict. He replied that PIPSC would base itself on some evidence of the likelihood of harm. PIPSC was concerned that Mr. Skinner would openly defy its decision, but if that happened, PIPSC would not take it as evidence of the likelihood of harm to the members. If the members had been put in harm's way, it was because Mr. Skinner chose to put them there.

[588] When he was asked if politics plays a role in the BOD's selection of committee members, Mr. Gillis replied that the BOD is a political body and that in his experience, the directors act in the interest of PIPSC as a whole to place those they believe are the best candidates on each committee.

[589] In reference to his testimony that Ms. Bittman would testify against PIPSC, Mr. Gillis was asked whether he was concerned because she would be untruthful. He disagreed and said that she was a witness for Mr. Skinner and that his letter to her indicated that as a PIPSC officer, she should be aware of its position in relation to the complaint. She declined an opportunity to meet with PIPSC counsel. If a PIPSC officer is called to testify by a complainant adverse to PIPSC's interests, it would be normal that that officer would seek the assistance of PIPSC generally and of its counsel. While it is not compulsory for an officer called as a witness to seek guidance from PIPSC's legal

counsel, it is the practice of PIPSC in any similar circumstance to offer assistance, as it did with Ms. Bittman.

[590] When he was asked whether the fiduciary duty is owed to the membership or to the office of the president, Mr. Gillis replied that it requires that the officer place PIPSC's interests above all others, which in his view includes the office of the president. There is a duty to the members, which is carried out through a well-established governance process.

[591] With respect to a vice-president's use of the letterhead from the office of the president, Mr. Gillis reiterated that vice-presidents do not require permission to use the letterhead from their office but that they are expected to exercise judgment and discretion in how it is used.

[592] Concerning the effect of the discipline on Mr. Skinner, Mr. Gillis said that the fact that Mr. Skinner is a retired member or that he no longer holds PIPSC positions does not alter the fact that he refused to adhere to the BOD's disciplinary actions and that the restrictions will remain in place until he adheres to them.

c. Re-examination

[593] In reference to the very contentious language allegedly used at the January 2017 BOD meeting, Mr. Gillis was asked how typical the meeting was in terms of the content and the language used. He replied that it was atypical in that the president addressed an issue of great concern to her. The discussion was heated but mostly respectful in that speakers waited their turns. He did not recall a large amount of foul language being used, but the discussion was definitely heated.

3. Mr. Ranger

a. Examination-in-chief

[594] Mr. Ranger has been legal counsel in the office of PIPSC's general counsel for nine years. Before that, he was a PIPSC employment relations officer for nine years.

[595] In his capacity as legal counsel, Mr. Ranger was Ms. Price's main contact at PIPSC during the investigations. He played no role in advising her as to whom she could or could not interview and was not aware of anyone at PIPSC who did so. He believed that it was highly unlikely that anyone had done so, as he was Ms. Price's main contact. He

played no role in advising her of PIPSC's preferred outcome in relation to the investigation in this case or in any other case in which an investigator had been retained. Once a mandate has been entered into with an investigator, the investigation proceeds without any influence from him or PIPSC.

[596] In his nine years as legal counsel, Mr. Ranger's role in investigations under PIPSC's *Harassment Policy* has been as the investigator's contact. He provides assistance with what might be required, such as hearing rooms, fees that participants might request, salary reimbursements, and travel expenses. He assists investigators with anything outside their mandates.

[597] With respect to Mr. Skinner's allegation that PIPSC interfered with Ms. Price's investigation, Mr. Ranger found it offensive. The investigator runs with the mandate and only informs him, as the main contact, of the progress of the investigation. For example, he would be informed if the investigator has difficulty contacting a party to the investigation or a witness.

[598] Mr. Ranger was referred to an email Ms. Price sent him on January 3, 2014 (Exhibit 17). He called her. She informed him that as she was meeting with the parties, more and more witnesses were being identified and would have to be interviewed. She did not seek permission to contact witnesses but kept him informed of the progress of the investigation.

[599] Ms. Price asked Mr. Ranger to obtain the audio recording of the BOD meeting during which Ms. Friesen alleged that Mr. Skinner called her a "hypocrite" and "full of s***". Mr. Ranger contacted the recording secretary, Ms. Gagnon, about the availability of the recordings. She advised him that when the BOD is not in session or during health or lunch breaks, recording is turned off. Mr. Ranger understood that the comments in question occurred during a break and that what might have been said was not available on the recording. He believed that Ms. Gagnon had confirmed this, as she had listened to the recording. He informed Ms. Price that the recording of the BOD meeting did not contain comments made during break periods.

[600] In Mr. Ranger's experience, it has been extremely rare for a BOD member to be required to testify in a proceeding in which PIPSC's conduct is at issue. He recalled only one other instance, in 2011, when Mr. Brodeur received a summons to testify about an unfair-labour-practice complaint made by a member. When he was asked

whether Mr. Brodeur was reminded of his fiduciary duty before testifying, Mr. Ranger said that he and then-president Corbett met with Mr. Brodeur, and Mr. Corbett reminded him of his fiduciary obligations to PIPSC.

b. Cross-examination

[601] Mr. Ranger acknowledged that it was possible that Ms. Price had contact with the general counsel, the president, or a vice-president without his knowledge.

[602] Mr. Ranger was aware of Mr. Skinner's allegation of bias or an apprehension of bias concerning legal counsel and the EC, as he had seen that in some correspondence by Mr. Skinner's first representative, Mr. Fernando.

[603] Mr. Ranger agreed that a progress report from an investigator could include that a report was 50% complete or that it was delayed because of difficulty contacting witnesses or because more witnesses were to be interviewed.

[604] For expenses such as travel, Mr. Ranger said that those arrangements are made once the investigator has been hired. When the arrangement states that reasonable expenses will be reimbursed, there is no need for an investigator to follow up with Mr. Ranger if the investigator determines that travel is necessary. Once such details are arranged at the outset of the mandate, PIPSC lets the investigator run with the matter.

[605] In reference to Ms. Price's email to him of January 3, 2014, which also forwarded an email from Mr. Skinner, Mr. Ranger was asked what it had to do with a progress report. He replied that she had advised him that the list of witnesses was expanding. She might have needed to go to Ottawa, Ontario, and she needed meeting space.

[606] Mr. Ranger was referred to the paragraph of the email that began with, "She feels", and was asked whether it concerned details of the investigation, rather than a progress report. He replied that it was a good example of a progress report and stated that he did not think that Ms. Price had provided any inappropriate information. Rather, she advised him where the investigation stood. She endeavoured to keep him informed of any delays in the investigation, for information purposes.

[607] When he was asked whether the sentence in Ms. Price's email that stated, "Paul and Shirley have conflicting evidence …", indicated details of the investigation, Mr. Ranger maintained that it was a status report and that it contained the type of

information typically relayed to him by investigators in the dispute-resolution process. When it was put to him that that was why some might reasonably assume that legal counsel will tinker with investigation reports, Mr. Ranger replied that other than Mr. Skinner's claim that those reports are tinkered with, he had never heard it from anyone else. Testifying under oath, he could state that Mr. Skinner's investigation reports were not tinkered with in any way, whatsoever.

[608] Mr. Ranger did not have a written record of his telephone conversation with Ms. Price.

[609] When he was asked whether the audio recording of the BOD meeting provided context to the incident that led to the Friesen complaint, Mr. Ranger said that he had not listened to it. Ms. Price wished to know if audio existed of the conversation that took place. Ms. Gagnon, the recording secretary, did not determine that the recording was not relevant. The request was whether the audio had captured the comments that were the basis of the complaint. Had Ms. Price requested the audio of the BOD in session, it would have been provided. Mr. Ranger's understanding was that the context was provided by the parties that Ms. Price interviewed. He did not know and could not answer why Mr. Skinner was not made aware of the investigator's request for the audio recording.

[610] It was put to Mr. Ranger that it was reasonable that individuals whom PIPSC selects to carry out harassment investigation reports have the point of view to protect the office of PIPSC's president. He replied that that presupposes that PIPSC retains an investigator and predetermines the outcome it desires, which is simply not true.

[611] When he was asked whether Ms. Bittman was reminded of her fiduciary obligation when she was called as a witness in Mr. Gilkinson's case against PIPSC, Mr. Ranger replied that the context was very different in that matter because PIPSC had spoken with her before her testimony, and her testimony was not adverse to PIPSC's interests.

[612] Mr. Ranger affirmed that PIPSC has zero tolerance for harassment. He was then asked whether the Denton complaint was an alleged harassment and retaliation complaint against Mr. Skinner and Mr. Sahota. Mr. Ranger replied that the complaint (Exhibit 2, tab 41) showed both Mr. Skinner and Mr. Sahota as respondents. The General Counsel's office followed up with Ms. Denton to clarify her intent. The

response was her email of August 8, 2013, which it took as indicating that she wished to proceed with a complaint only against Mr. Skinner. Mr. Ranger stated that he could confirm that when Ms. Price met with Ms. Denton, the latter knew that the matter was proceeding only against Mr. Skinner. She did not approach the General Counsel's office to say otherwise.

c. Re-examination

[613] Mr. Ranger confirmed that when an investigator requests documentary evidence to assist with an investigation, the parties to the complaint are never advised that the investigator has made such a request.

C. The complainant's reply evidence

[614] With respect to the information obtained through his ATIP request to the CRA, Mr. Skinner was asked to respond to the suggestion that the CRA had obtained his confidential information because he had used its equipment. Mr. Skinner said that when he was a steward in the AFS Burnaby-Fraser subgroup, he used CRA equipment, as did all stewards.

[615] When he became the AFS regional representative for the BC/Yukon region, his responsibilities included union-management consultations with the CRA's regional assistant commissioner, who told him that he was not to use CRA equipment for union work. Mr. Skinner said that that was when he purchased his first laptop computer, years before he became a director. He installed PIPSC's "GroupWise" email system on the laptop and never again used CRA equipment for union business.

[616] In cross-examination, Mr. Skinner stated that he had a teleworking arrangement that was reviewed annually from May 1994 until his retirement. On his desk at his home office, he had his laptop and the CRA laptop. He would go to the CRA's office in different situations, such as when he worked on a member's grievance or interviewed a taxpayer. Mr. Skinner's arrangement was that he would charge as much to PIPSC as he could, up to nine days per month, as union leave without pay. He would submit a claim to PIPSC and would be paid for that time. The CRA would not pay him for those days. At the end of the year, he would receive T4 slips from both the CRA and PIPSC. Most of his time was spent on union-related matters. Sometimes, he performed audit work.

[617] Concerning his email to Ms. Carvalho on June 19, 2013, at 12:52 p.m. (Exhibit 2, tab 18), Mr. Skinner said that he was at home that day, not at the CRA office. He asserted that it was not possible that he erred and used the CRA laptop to send the email. His theory is that based on the level of detail, someone copied (cut and pasted) information from the Virtual Binder. He also theorized that the email was found through his ATIP request to the CRA because someone had accessed the information and sent it to the CRA.

[618] When Mr. Skinner was reminded that Ms. Roy testified that no one had accessed the Virtual Binder, he maintained that someone senior at PIPSC had to have had access to that information. He said that while the investigation by PIPSC's IT services could find no trail of the email having been sent or accessed by any other means, Ms. Roy did not know how the CRA obtained a copy of it.

[619] Mr. Skinner said that PIPSC owned GroupWise and had access to all his emails. When it was put to him that if PIPSC wanted to access his GroupWise emails on his personal laptop, it would need assistance from IT, Mr. Skinner maintained that senior people at PIPSC had access to them. When he was asked if senior PIPSC people could access GroupWise with assistance from IT, Mr. Skinner admitted that he had no such personal knowledge and that it was based on rumours.

VI. Summary of the arguments

[620] Both parties' written submissions were lengthy and detailed. Mr. Skinner's covered 72 pages, and those of the Institute ran to 320 paragraphs over 110 pages. While both parties made some oral arguments, as they are substantially captured in their written submissions, I have summarized only the written arguments.

A. For the complainant

[621] The complainant began by reviewing the legislative provisions on unfair-labour-practice complaints and by arguing that complaints made under s. 188 of the *FPSLRA*, which refers only to disciplinary action taken in a discriminatory manner, also include action by the employer that was arbitrary or in bad faith, citing *Strike v. Public Service Alliance of Canada*, 2010 PSLRB 22, in support of his position. He argued that what constitutes discriminatory behaviour encompasses a wide spectrum, such as carelessness, arbitrariness, gross negligence, actual or perceived bias, bad faith, dishonesty, or a lack of duty of care.

[622] The complainant argued that he had been branded a harasser, without substantiation, even before the investigation began. He outlined the facts that he felt supported that conclusion. According to him, he had been tested far more harshly than others in the same position. Later in his arguments, he alleged that some of those people were treated less harshly than he was because they formed part of "the inner circle."

[623] The complainant submitted that the investigation reports had received only a cursory review at best before discipline was imposed and that several people within PIPSC, elected or employed, had failed their duty of care as a result of their bias towards him.

[624] The complainant argued that sensitivity training had never been imposed on anyone and alleged that "normal" sensitivity courses were not acceptable to PIPSC. Therefore, he had been discriminated against as he had been treated differently.

[625] The complainant argued that the investigation reports were clearly deficient and stated that the EC had failed its duty to critically review them and was wrong to rely solely on the opinions of other professionals. He cited *Guay v. Canada (Attorney General)*, 2004 FC 979, for the proposition that the investigation reports into the three alleged harassment complaints need not have been perfect, but a clearly deficient report relied on by the Board will provide a basis for judicial review. In support of his argument, he cited the report of an external investigator about a complaint made against Ms. Daviau, which he stated the EC did not accept.

[626] The complainant reviewed the appeal process, stating that it was very narrow in scope and did not take into account any deficiencies in the investigation report and that the appeal determines only whether discipline was applied in a manner that was discriminatory, arbitrary, or in bad faith. He pointed to the matter involving Mr. Lazzara as the exception to the rule. In that case, the BOD decided to exceed the appeal mandate and determined that the process and conclusions contained significant errors. The complainant alleged that the evidence indicated that PIPSC applied the principles embodied in its policies and by-laws to him in a discriminatory manner when he was disciplined despite the fact that based on their experience, the decision makers knew that the reason for which they disciplined him was wrong.

[627] The complainant's arguments then turned to the alleged deficiencies in the report on the Friesen complaint. First, it failed to consider the context of the events. As his first example, he stated that the report failed to reach any conclusion as to whether Ms. Friesen was in fact a hypocrite. He reasoned that expressing the truth cannot constitute bad behaviour. He also alleged that Ms. Friesen called him a criminal because her comment to the effect that he ran campaigns of hate was an allegation that he was guilty of violating the hate-speech provisions in the *Criminal Code* (R.S.C. 1985, c. C-46). He argued that this should have been considered harassment by the investigator and PIPSC.

[628] With respect to the Mertler complaint, the complainant stated that the investigator failed to consider that he was upset by her behaviour at the head table, and as a result, he used a word that he rarely uses. He also complained that the investigator failed to take into account the fact that she might suffer from post-traumatic stress disorder (PTSD), as she had been attacked at work. He referred to his comments on the preliminary report in which he had raised this issue and alleged that it might make her overly sensitive and reactive to any comments from a male and that it was perhaps the reason she refused his apology.

[629] The complainant then argued that the investigation reports failed to provide him with the totality of the allegations for which he was disciplined, stating that the allegations of bad behaviour, breach of confidentiality, obtaining witness statements, abuse of power, public manner, and prediction of future behaviour were extensions of the investigator's mandate and that he had not been advised of the policy or by-law he had breached with respect to those offences. Therefore, he was denied an opportunity to defend himself. He also stated that the allegation of retaliation had never been clearly put to him. He argued that facts in the report that were hypothetical, not crucial or law-related, or that referred to issues or allegations outside the investigator's mandate should have been excised and were not, due to bias. They demonstrated that he was the victim of discrimination.

[630] Then the complainant, at length, refuted the application of the *Cassidy* case to him in the investigation report. He also attacked the *Cassidy* decision, questioning the finding of retaliation made in that case and its application to him. He returned to this case later in his submissions to allege that as a CRA auditor with experience in case

law, Ms. Bittman should have seen the investigator's glaring error of citing that case as being applicable to his.

[631] The complainant then addressed the issue of the hospitality suite, arguing that Ms. Denton had not felt threatened by his actions; therefore, they could not constitute retaliation. He also argued that no retaliation occurred as no hospitality suite had been set up. He repeatedly pointed out that the investigator had found that the complainant had had an honest belief that a conflict might arise. He further stated that he was not notified of the additional allegation of retaliation and the denial of a benefit to Ms. Denton. PIPSC's failure to see this was evidence of its bias against him and conflict of interest; therefore, it discriminated against him.

[632] The complainant then argued that Institute policy was violated, as documentation had not been provided to establish why it had accepted the complaints or the investigation reports but had cited no specific provisions of the policies he had referred to.

[633] He also argued that the duty of care owed him was breached when Mr. Brodeur was provided with documentation that he was not able to understand.

[634] The complainant then turned to the letter of discipline, and in a dense mix of factual recitation and argument, reiterated arguments he had already made and questioned the finding of retaliation, citing the Board's decision in *Corbett v. Professional Institute of the Public Service of Canada*, 2016 PSLREB 82, in support of his allegation that no retaliation occurred. He questioned how the investigator could have concluded that he had done what he did because Ms. Denton had made a complaint. He also questioned what policy he had breached in PIPSC's allegation that he had done what he had done in a public manner; namely, there were consequences for making a complaint. He had admonished her in front of her colleagues, and he had denied her a benefit available to others. Mr. Skinner also stated that his high stress level, anxiety, and high blood pressure should have been taken into account by the investigator and the EC. He also questioned the comment in the letter of discipline that as a leader, he was expected to set standards for others, and reviewed at length the conduct of others, including the three complainants as well as Ms. Roy, Ms. Bittman, Ms. Daviau, Mr. Brodeur, and others.

[635] The complainant then took issue with PIPSC, raising the two 2012 letters as well as the statement that he had exhibited a pattern of behaviour. He reiterated his position that he had never before been disciplined and that he had not been advised that he was being investigated for bad behaviour. He stated that PIPSC had no foul-language policy, citing private-sector cases on the use of foul language by employees, such as *Tomala v. Wal-Mart Canada Corp.*, 2005 CanLII 2819 (ON SC).

[636] He also questioned what by-law he had contravened further to PIPSC's allegation that he had violated the confidentiality of the complaint process. The investigator's accusation of improper behaviour in obtaining witness statements and of improper influence on those witnesses was evidence of her bias against him. He also questioned how an investigator who was not a psychologist could conclude that his present behaviour would continue.

[637] The complainant also called into question the investigator's independence, pointing to an email she sent on January 3, 2014, to Mr. Ranger about witnesses she might need to speak to. The complainant stated that the email went beyond a mere status report.

[638] The complainant then stated that PIPSC had violated s. 188(c) of the *FPSLRA* by sending the October 2014 note to stewards just before his election, which indicated to the members that there were consequences for making complaints with the Board and subtly told people not to vote for him. He alleged that PIPSC had received only one inquiry related to his complaint, yet it chose to distribute its note widely, which was evidence of retaliation.

[639] He alleged further retaliation on the part of PIPSC when it sent confidential information about him to his employer, violating s. 188(e) of the *FPSLRA*. He stated that the CRA used this information to ask him to repay $152 000 in time he had claimed was for union work.

[640] The complainant stated that while context was important, PIPSC sought to narrow the scope of the investigation to only the incident underlying each of the complaints. At several points in his argument, he complained that the behaviour of the complainants was not investigated. He also argued that with respect to the harassment complaints, the political environment should have been taken into account. He cited an article in the *Hill Times* of August 22, 2018, in support of his contention that the

Institute had issues related to conflict of interest, a dysfunctional BOD, confidential deals, etc. He stated that PIPSC used the steps of the *Dispute Resolution and Discipline Policy* but that it did not follow the policy's intent and that it used the policy to collude in eliminating rivals like him. He laid the blame for this on his failure to support Ms. Daviau and his position on the elimination of the vice-president positions. He referred to Mr. Corbett's and Ms. Bittman's testimonies on the political nature of the EC and BOD and Mr. Corbett's allegation that both bodies were in a conflict of interest with respect to Mr. Skinner's case.

[641] The complainant then turned his attention to the Institute's *Conflict of Interest Policy*, stating that it was deficient because it relied on self-declaration and that a failure to declare a conflict of interest resulted in decisions being made in a discriminatory manner. The Institute failed its duty of due diligence by not having the investigator review this issue.

[642] The complainant submitted that the three complaints had been sent for investigation without the proper documentation so that legal counsel would support such a move to the EC. He alleged that bias against him was the motivating factor.

[643] The complainant then attacked PIPSC's failure to provide the investigator with the tape recording of the BOD meeting, which led to Ms. Friesen filing her complaint. According to him, Mr. Gillis's assistant reviewed the tape and advised him that it did not include the disputed conversation between Ms. Friesen and Mr. Skinner, which had occurred during a health break. Mr. Skinner stated that the tape would have demonstrated the unprofessional context of meetings. The investigator accepting PIPSC's assurance that it did not contain relevant information indicated that the investigator was not independent.

[644] Mr. Skinner complained that Ms. Friesen's past behaviour had not been investigated and that the evidence was ignored of one of his witnesses, who told the investigator that Ms. Friesen was a bully. He alleged that Ms. Friesen convinced Ms. Mertler to make her complaint in return for Ms. Friesen's support of her candidacy to become a full-time steward.

[645] The complainant alleged that PIPSC ought to have known that Ms. Denton's complaint was in reality made against Mr. Sahota and not him, as Mr. Sahota would decide whether Ms. Denton would attend the AGM.

[646] The complainant then devoted a substantial portion of his argument to repeating extracts from the June and July 2013 EC minutes and Ms. Bittman's testimony in support of his allegation that the EC based its disciplinary decision on erroneous information; therefore, the disciplinary process was discriminatory. He denied that he is a repeat offender, that others were afraid to challenge him, and that he was uncooperative and refused mediation, among other things.

[647] Mr. Skinner then dealt with his request that PIPSC call a special meeting of his region, alleging that it was refused because the Institute feared that he would not be removed. Instead, it applied the harshest discipline to him and constructively dismissed him.

[648] The complainant next took issue with the investigator selection process, arguing that the fact that PIPSC interviewed candidates injected bias into the process, which was then compounded by its selection of an investigator from an all-female firm. He argued that his proposed investigator should have been accepted as long as the cost was similar, pointing out how this would have avoided a number of disputes between the parties. He alleged that PIPSC did not agree with his proposals only because it wanted to select someone who agreed with management's philosophy and Ms. Daviau's culture change and the elimination of directors and stewards who did not agree with her. He pointed to the investigator in the matter involving Mr. Brodeur's complaint against Mr. Taticek as having been chosen to obtain a report that painted those in power in a favourable light.

[649] The arguments then turned to the issue of Mr. Brodeur. Mr. Skinner alleged that Mr. Brodeur did not review the report carefully as he would simply have done what Ms. Daviau and Ms. Bittman wanted him to do, so that he could keep his director seat and obtain an annulment of his bankruptcy. He complained that despite having been ineligible to hold office for 37 days, Mr. Brodeur continued and even attended PIPSC meetings and had not been disciplined by PIPSC for having lied. As Mr. Brodeur ceased to be a director when he was declared bankrupt, there was no quorum when Mr. Skinner was disciplined. Lastly, he stated that no documentation had been provided indicating that Mr. Brodeur's proficiency in English was sufficient to allow him to critically review the report for errors.

[650] The complainant next alleged that his ouster was orchestrated for political reasons so that Ms. Daviau could be elected, consolidate power, and effect a culture change. He alleged that the complainants, along with Ms. Bittman and Ms. Daviau, formed a tight circle that used the *Harassment Policy* and the *Dispute Resolution and Discipline Policy* as weapons against him. The arguments outline "in-group" versus "out-group" bias and allege that as he was part of the latter, he was discriminated against and treated harshly.

[651] The next lengthy portion of the complainant's arguments was devoted to in his words, "what really happened". The events in question were reviewed, and his comments were appended. In his comments, he reiterated his grievances, beginning with his complaint about legal counsel reviewing his complaint and the investigation report without any standards, manual, or template to follow to determine whether it was frivolous or vexatious. He then reiterated his opposition to PIPSC not hiring his chosen investigator. He returned to his allegation that the preliminary reports contained several errors that were missed, such as issues on the allegation of retaliation and bad behaviour, Ms. Friesen having referred to him as a criminal, and Ms. Mertler perhaps suffering from PTSD. He then repeated his allegation that no documentation was provided to prove that the EC had reviewed the report for errors. He alleged that it had done so without standards or sufficient time and repeated his contention that Mr. Brodeur was not bilingual enough to have reviewed it. The appeal mandate was so limited that his issues were not part of the appeal. Again, he repeated his allegation that the complaint process was politicized and that the general counsel, as an employee who wished to keep her job, had an interest in supporting Ms. Daviau rather than him.

[652] The complainant then returned to the hospitality suite issue, arguing that he had indeed conducted business as usual, as he had raised an issue of concern to him at the meeting, and while it was a tough issue that might have offended someone, he had the right to raise it and acted professionally.

[653] Next, he reviewed the Denton complaint in detail, repeating bits of evidence and appending his comments to them in 35 bullet points, repeating his issues with the complaint and its investigation, the issue of retaliation being alleged.

[654] The submissions then deal with Mr. Skinner's interpretation of a Supreme Court of Canada case, *Peoples Department Stores Inc. (Trustee of) v. Wise*, 2004 SCC 68, which he argued demonstrated that the business-judgment rule required directors of corporations to demonstrate that they followed a reasonable decision-making process and that the decision made was reasonable.

[655] The arguments then returned to the *Cassidy* decision, a case of sexual harassment before the CHRT. That complaint was later amended to include alleged incidents of retaliation. The complainant argued that unlike in that case, he had been neither wilful nor reckless with respect to the hospitality suite, had not harmed Ms. Denton's feelings, had not given contradictory evidence, and in fact, had been believable. Had the EC properly reviewed the report, it would have determined that this case was inapplicable.

[656] The next section of the arguments was devoted to "Other cases", beginning with *Virk v. Bell Canada (Ontario)*, 2005 CHRT 2, and *Wong v. Royal Bank of Canada*, 2001 CanLII 8499 (CHRT), on the issue of intention with respect to retaliation. The complainant submitted that there was no evidence of his intention to retaliate, that the evidence instead supported his desire to avoid further conflict, and that Ms. Denton did not perceive his actions as retaliation. The complainant also cited *Witwicky v. Canadian National Railway*, 2007 CHRT 25, on the issue of his motivation and lack of proof of improper motivation. As he had provided a reasonable explanation for his actions, which was credible, no retaliation could have taken place. Lastly, he cited *C.S.W.U. Local 1611 v. SELI Canada and others (No. 3)*, 2007 BCHRT 423, arguing that unlike in that case, Ms. Denton did not fear losing anything as a result of his actions.

[657] Next, the complainant examined By-law 24.1.1(d) of the *Dispute Resolution and Discipline Policy*, which prohibits circulating false reports or wilful misrepresentations of the Institute. He claimed that he had not done so. He had made his comments in a closed meeting to members of the BC/Yukon Regional Executive, who had a right to know his concerns. The EC had failed by not questioning the investigator's conclusion on this.

[658] With respect to section (n) of By-law 24.1.1, which prohibits breaching confidentiality by disclosing details of closed-door sessions or personal information relating to members, the complainant again denied that he had done so. He had only

indicated his opinion that additional conflict would arise were the hospitality suite held in his room. On the issue of confidentiality, he questioned which by-law he had contravened by obtaining witness statements and that obtaining them was consistent with the rules of natural justice. He also pointed out that the signed witness statements that he obtained were ignored, while the unsigned statements of those interviewed by the investigator were accepted.

[659] The complainant then returned to the issue of the two 2012 letters being used against him, alleging that as he was an employee of the Institute, it had violated its contractual duty of honest performance towards him by using them to find a pattern of bad behaviour. He cited case law on the distinction between disciplinary and non-disciplinary letters.

B. For the respondent

[660] As preliminary comments, the respondent submitted that the hearing of a complaint made under s. 188 of the *FPSLRA* is not a *de novo* (starting afresh) proceeding. In the adjudication of a disciplinary matter, the conclusions of fact made by an investigator retained by the employer are not binding on the adjudicator.

[661] The respondent submitted that in this matter, the Board's mandate is twofold, (1) to examine the procedure followed by PIPSC in dealing with the three complaints, and (2) to examine the outcome based on the facts set out in the investigation reports. After that, the Board must consider whether there was discrimination in either the process followed or the result.

[662] The respondent submitted that procedurally, PIPSC did everything correctly. It hired an independent investigator, who carried out a thorough investigation. Mr. Skinner had the opportunity to review the preliminary reports of the investigator's findings and to make comments in response. Given this process, the EC had every right to make its decision based on the investigator's findings. Mr. Skinner's disagreement with the factual findings is irrelevant. The investigator's conclusions were reached fairly and without discrimination, and the substantive outcome bore no marks of discrimination. The discipline imposed on Mr. Skinner was minor.

[663] In its written submissions, the respondent began by setting out the facts, beginning with those related to the Friesen complaint. The respondent outlined that

PIPSC had followed its policy, that Ms. Friesen and Mr. Corbett had recused themselves from the EC's discussion on the complaint, and that Mr. Skinner had rejected mediation, leaving the Institute no option but to remit the matter to investigation. The selection of Ms. Price was reasonable, and Mr. Skinner did not object to it at the time. The respondent argued that it was the general counsel's role under the 2009 *Dispute Resolution and Discipline Policy* to select the investigator. The respondent also noted that a finding of inappropriate conduct had been made and that Mr. Skinner's lack of self-awareness or remorse had been noted in the investigation report.

[664] With respect to the Mertler complaint, the respondent pointed out that Mr. Corbett had again recused himself, and that once again, Ms. Price had followed procedures and had found inappropriate conduct on the part of Mr. Skinner.

[665] With respect to the Denton complaint, the respondent argued that the same process had been followed as in the other two complaints and that the investigator found that harassment had occurred with respect to the additional allegations of retaliation.

[666] The respondent then turned to the EC's deliberations and outlined the reasons behind its decision.

[667] As for the breach-of-confidentiality issue with respect to Mr. Skinner seeking witness statements, the respondent argued that it was not considered disciplinary and that he was not disciplined for it.

[668] The respondent's reasons with respect to imposing the requirement for sensitivity training were then outlined in detail.

[669] The respondent then turned to Mr. Skinner's opposition to having the Institute's representative, Mr. Hindle, attend meetings, stating that such a requirement was not unknown and that in any event, it was not part of the discipline imposed on Mr. Skinner.

[670] With respect to Mr. Skinner's appeal, PIPSC had decided to refer the matter to an experienced neutral third party, to avoid impartiality issues. Mr. Skinner had agreed to Ms. Noonan being retained and had rejected her only on the second appeal, after she ruled against him on the first one. Ms. Noonan never coached Ms. Daviau and had acted only as a neutral third party.

[671] The respondent then refuted Mr. Skinner's allegation about sensitivity training and the alleged requirement that it be conducted by a psychologist.

[672] The respondent stated that Ms. Roy had never helped write letters of apology; she had only reviewed them.

[673] The respondent argued that Mr. Skinner's intransigence dragged this matter out and worsened the impact on him.

[674] The respondent then turned to the legal issues of this matter and argued that a precondition to a complaint under the *FPSLRA* is the requirement that discipline or a penalty be imposed. Many of Mr. Skinner's allegations did not involve either and should be dismissed, with little need for analysis. The respondent then listed the allegations falling into that category.

[675] The next allegations addressed were about bias, conflict of interest, and the alleged resulting lack of a quorum.

[676] The respondent submitted that the conflict-of-interest issue had been appropriately dealt with. It pointed out that Mr. Skinner's allegations as to the source of the conflict changed over time in that he had alleged retaliation for having supported a reduction to the number of vice-presidents, he had then alleged that it was the fact that Ms. Bittman disliked him for his support of Mr. Lazzara, and finally, he had alleged that the friendship between Ms. Bittman and Ms. Daviau was the source. The respondent argued that political conflict does not automatically constitute conflict of interest. In support of this argument, it cited *Gilkinson v. Professional Institute of the Public Service of Canada*, 2018 FPSLREB 62, which stated that being on the losing end of a political power struggle is not discrimination. It submitted further that there was no evidence of a lack of will on the part of the EC to reach an honest conclusion.

[677] The respondent stated that a quorum of the EC was always maintained, contrary to Mr. Skinner's allegations.

[678] On the issue of Mr. Brodeur's bankruptcy, the respondent pointed out that it was annulled, as if it had never happened, and in any event, no action on Mr. Skinner's case took place during the period of the bankruptcy.

[679] The respondent argued that its *Conflict of Interest Policy* was not deficient and that even if it was, the decision in *Bremsak v. Professional Institute of the Public Service of Canada*, 2009 PSLRB 103 ("*Bremsak 2009*") confirms that that is not the issue.

[680] The arguments then turned to the collusion allegation, and the respondent maintained that there was no evidence of it.

[681] Next, Mr. Skinner's allegations of unfairness were addressed. The respondent asserted that PIPSC appointed a professional investigator. Mr. Skinner was given the right to participate in the investigations and to comment on the preliminary investigation reports and therefore was afforded procedural protections. In support of this argument, the respondent cited, among other decisions, *Veillette v. Professional Institute of the Public Service of Canada*, 2009 PSLRB 58.

[682] The respondent argued that there was no evidence of anti-male bias or a predetermined outcome to the investigation, and it denied that the investigator made medical findings about Mr. Skinner. The investigator was thorough and was not required to interview everyone suggested by Mr. Skinner. He acknowledged his "wake … up" comment and had announced that he would not welcome the complainant to the hospitality suite, so the investigator did not need additional witnesses. The respondent denied the allegation that the investigator promised not to interview other directors.

[683] The respondent then turned to the issue of witness statements, stating that there was no entitlement to them under the applicable *Dispute Resolution and Discipline Policy*.

[684] The Institute had properly rejected Mr. Skinner's broad request for the disclosure of all evidence gathered, whether written or oral, including emails exchanged between a number of individuals. Ms. Roy had advised Mr. Skinner that he was entitled only to the information he required to respond to the allegations made against him and to review any evidence relied on in support of those allegations.

[685] The respondent submitted that there was no evidence to support the complainant's allegation that the investigator's record of witness statements was inaccurate or fabricated.

[686] The investigator could not consider the EC conflict-of-interest or bias issue as it was not her role and was not part of her mandate.

[687] The respondent argued that the investigator was entitled to consider the retaliation issue as Mr. Skinner had had notice of it and had addressed it.

[688] On the issue of Mr. Skinner being denied representation by legal counsel at the Institute's expense, it was the Institute's normal practice. He had been treated as had all other members, including the three complainants.

[689] The respondent then canvassed labour-board jurisprudence concerning allegations that a union had breached the rules of procedural fairness in imposing internal discipline.

[690] According to the Institute, Mr. Skinner's allegations concerning the fairness of the investigation process involved arguments that the principles of natural justice and procedural fairness had been breached. The Institute argued that to obtain a remedy under s. 188 of the *FPSLRA*, an allegation of a breach of natural justice and procedural fairness, even if well founded, is not sufficient to establish a breach. Mr. Skinner also had to establish discrimination. The allegations he relied on did not suggest that he was treated any differently than were other members, from a procedural fairness point of view. The respondent argued that as a result, on their face, the allegations did not support a finding of discrimination. Its position was that in any event, no breach of natural justice or procedural fairness occurred. It submitted that s. 188 of the *FPSLRA* does not cover allegations of breaches of natural justice unless there is a link between the alleged breach and "discriminatory" conduct.

[691] The respondent then reviewed the jurisprudence and the wording used in the legislation. As Mr. Skinner had been treated as had all the others, he had not been discriminated against. The discipline imposed was reasonable and proportionate. While sensitivity training was new, it was needed and was a reasonable sanction.

[692] Ms. Bittman's joking comment to Mr. Dickson did not constitute harassment and was not conduct similar to that in this case.

[693] The two 2012 letters to Mr. Skinner about his communications were not part of the discipline imposed on him. The EC acted reasonably when it considered them while crafting an appropriate penalty.

[694] The respondent then turned to the allegation of bias with respect to the EC meeting of April 22, 2014, during which it considered the Mertler and Denton reports. The respondent argued that this allegation was refuted by Ms. Roy's testimony.

[695] Asking Mr. Skinner to apologize to Ms. Mertler even if no harassment was found was reasonable because his behaviour was found unacceptable, and the neutral third party had confirmed the EC's right to consider the totality of the findings when determining an appropriate penalty. The Institute submitted that it was the EC's responsibility to address inappropriate conduct. In any event, no discrimination was present.

[696] The respondent submitted that the Board does not sit in appeal of internal disciplinary decisions made by unions. Its mandate is limited to reviewing internal discipline to determine whether a union applied its disciplinary standards in a discriminatory manner.

[697] The respondent then addressed the allegation that the discipline imposed on Mr. Skinner effectively removed him from office. It stated that aside from the Board lacking jurisdiction under the *Canada Not-for-profit Corporations Act*, the fact was that Mr. Skinner was not removed, as the corrective measures had been specifically designed to allow him to carry out the core duties of his position without requiring his removal.

[698] The respondent addressed Mr. Skinner being barred from attending Institute functions, the freezing of his hospitality accounts, and the requirement that meetings he was involved in be attended by an observer. It submitted that these measures were reasonably and logically connected to the findings and that the EC had the power to do what it did under its *Dispute Resolution and Discipline Policy*. Lastly, regional funding was frozen, given the EC's concern with the BC/Yukon Regional Executive, and it was not connected to Mr. Skinner.

[699] Concerning the allegation that documents should have been translated into French before determining whether discipline was appropriate, the respondent argued that that was not the EC's practice and that Mr. Brodeur understood the documents he was given.

[700] With respect to Mr. Skinner's allegation that the sensitivity training offered to him was psychological counselling, the respondent pointed out that he had been informed that not all the training options involved psychologists and further that it had accepted his first suggestion for a course that would fulfil the condition.

[701] The respondent noted that during his testimony, Mr. Skinner withdrew the allegation that the Institute had retroactively applied the 2014 *Dispute Resolution and Discipline Policy*.

[702] Concerning the allegation that the EC should have considered additional evidence that was not in the investigation reports, the respondent submitted that doing so would have been inconsistent with the process and would have violated the duty of procedural fairness.

[703] The respondent asserted that the retaliation finding was reasonable, referring to Mr. Skinner's testimony about barring the complainants from the hospitality suite. The later cancellation of any hospitality suite did not erase the initial retaliation. No intention to retaliate was needed, and Mr. Skinner should have been aware of the intimidation inherent in his comment. The respondent referred to the case law cited by the investigator on this issue and submitted that the finding of retaliation was reasonable and that the EC was entitled to rely on it. Furthermore, Mr. Skinner was not discriminated against.

[704] The respondent submitted that there was no evidence that the discipline was imposed on Mr. Skinner in a discriminatory manner. It argued that even if the Board finds that one or more of Mr. Skinner's allegations of unfair discipline are well founded, it cannot intervene in internal union matters unless it finds that (i) the Institute applied "standards of discipline" to Mr. Skinner, and (ii) that they were applied "in a discriminatory manner" (per the *FPSLRA*). The Institute cited s. 188(c) of the *FPSLRA* as well as the *Beaton v. International Longshore and Warehouse Union-Canada*, [2017] C.I.R.B.D. No. 3 (QL), *Gilkinson*, and *Myles v. Professional Institute of the Public Service of Canada*, 2017 FPSLREB 30, decisions, and Canada Labour Relations Board (now the Canada Industrial Relations Board) jurisprudence on this point.

[705] The Institute stated that in *Myles*, the Board noted that unlike the provision on the duty of fair representation, absent a finding of discrimination, the Board is not

permitted to interfere based on findings of bad faith or arbitrary conduct. Section 187 of the *FPSLRA*, which deals with the actions of an employee organization in the representation of its members, specifically states that an employee organization and its officers and representatives shall not act in a manner that is arbitrary, discriminatory, or in bad faith. Section 188(c) does not contain the phrase "bad faith" or the word "arbitrary". The fact that Parliament saw fit to use the word "arbitrary" and the phrase "bad faith" together with the word "discriminatory" in s. 187 and that in the very next section, it omitted that word and phrase is a clear indication of Parliament's intent that they are not a basis for a complaint under s. 188(c). The respondent submitted that there was no evidence that the Institute's standards of discipline were applied to Mr. Skinner in a discriminatory manner.

[706] The respondent addressed the allegations concerning the appeals. Mr. Skinner alleged that EC members should not have sat as BOD members to consider his appeal, but the issue was moot, as PIPSC hired a neutral third party to hear the appeal. Mr. Skinner argued that the terms of reference were too restrictive and that he was not consulted on them. This is untrue, as he was consulted by Ms. Roy, although she was not required to. His only comment was to ask that the neutral third party be provided with documents that the BOD would have had if it had been the body to consider the appeal. The terms of reference conformed to the Institute's policy and therefore did not consider the conflict-of-interest issue.

[707] There was no discrimination by not allowing Mr. Skinner to make oral remarks. The 2009 *Dispute Resolution and Discipline Policy* states that appeals are done in writing and that in the past, identical requests with respect to oral submissions made by others have been refused. The Board rejected the same argument in *Bremsak v. Professional Institute of the Public Service of Canada*, 2013 PSLRB 22 (upheld in 2014 FCA 11), which found the issue an internal matter.

[708] As for the allegation that the selection of the neutral third party had been improper, the respondent stated that Mr. Skinner had been consulted, that he had agreed to Ms. Noonan's appointment, and that he objected only after she had dismissed his first appeal.

[709] The respondent argued that placing corrective measures in abeyance pending appeals, absent special circumstances, as in this case, would not be consistent with the

Institute's past practice, as confirmed by Ms. Roy. Therefore, no discrimination occurred.

[710] The respondent stated that Mr. Skinner alleged that PIPSC had breached his confidentiality in these three incidents: (1) when Ms. Bittman informed the BOD that Ms. Friesen had made her complaint against him, (2) when the final investigation reports were placed in the Virtual Binder, and (3) when the Institute advised its subordinate bodies that Mr. Skinner could not attend their events. It argued that the first incident was not a breach of confidentiality and that in any event, Mr. Corbett, not Ms. Bittman, had disclosed it. In her complaint against Mr. Corbett, Ms. Bittman mentioned Ms. Friesen's complaint, and Mr. Corbett had forwarded Ms. Bittman's complaint to the BOD. As for the posting in the Virtual Binder, the respondent submitted that doing so was the same as providing paper copies to those entitled to receive them, and such posting had become the recent practice. And as for advising the subordinate bodies that Mr. Skinner could not attend their events, it was done only when required and in a privacy-sensitive manner.

[711] There was no evidence as to who provided the information in the CRA chronology obtained by Mr. Skinner as a result of the ATIP request. While he alleged that it was PIPSC, it could just as well have been provided through him or his representative. PIPSC had carried out an internal investigation and had ruled out unauthorized access to its computer systems as the source of the disclosure. If there was an unintended breach of confidentiality, it did not amount to discipline or a penalty within the meaning of s. 188 of the *FPSLRA*. Lastly, there was no evidence of discriminatory treatment with respect to the application of any disciplinary standard.

[712] With respect to Mr. Skinner's allegations concerning committee selection, the respondent submitted that the selections were carried out in accordance with the Institute's *Policy on Committees of the Board of Directors*, and testamentary evidence confirmed that the region had no right to select committee members. The BC/Yukon region later confirmed in writing that no political interference had occurred. There was no evidence of intent to prejudice Mr. Skinner, and the evidence disclosed that other regions had had their selections overridden. No discrimination occurred.

[713] The respondent then addressed what it characterized as Mr. Skinner's "other arguments". Mr. Sahota was not included in the Denton complaint because the Institute

followed up with Ms. Denton, who confirmed that her complaint was made only against Mr. Skinner.

[714] Ms. Roy did not fail to advise Ms. Aschacher on how to handle the Denton complaint. She advised that it was business as usual.

[715] Mr. Skinner argued that the EC's involvement in disciplinary matters resulted in political decisions. The process in question was democratically adopted and ought not to be interfered with by the Board.

[716] The Institute argued that there was no evidence to support Mr. Skinner's allegation that the function of screening-in complaints was used to insulate EC members from complaints against them. Ms. Roy testified to how she performed the function and pointed to other complaints against EC members that had proceeded.

[717] The Institute argued that this was not a *de novo* hearing on the facts underlying the discipline and that Mr. Skinner had tried to reargue them. The EC was entitled to rely on the reports, as the investigations were carried out with procedural fairness.

[718] On the issue of PIPSC's alleged legal interference and tinkering with the investigation reports, the respondent asserted that it had been refuted by the evidence.

[719] Mr. Gillis refuted the allegation that he had allowed an election breach to occur when Mr. MacDonald handed out election material at the Steward Council meeting in 2014.

[720] The respondent commented on the evidence of Ms. Bittman and Mr. Sahota. The Institute argued that clearly, they used their opportunity as witnesses to criticize it. Ms. Bittman acknowledged that she was "at war" with it, and the respondent pointed to several portions of her testimony as evidence that the Board should treat her evidence with caution. As for Mr. Sahota's criticism, it was unreasonable, not based on personal knowledge, and not confirmed by evidence. The respondent referred to several examples in his testimony that the Institute viewed as supporting its position.

[721] Having covered the allegation under s. 188(c) of the *FPSLRA*, the respondent then turned to Mr. Skinner's allegations under ss. 188(b), (d), and (e). The following submissions addressed his allegation that the Institute breached those provisions.

[722] The respondent argued that s. 188(b) applies only when an employee has been expelled or suspended from membership in a union or when membership has been denied. Mr. Skinner was never expelled or suspended from the Institute; nor was he denied membership. In *Bremsak 2009* and *Corbett*, the Board confirmed that the diminishment of a member's status within a union does not equate with expulsion, suspension, or denial of membership, which is a condition precedent under s. 188(b). Nor is the removal of a member from an internal union position considered a suspension from membership.

[723] Sections 188(d) and (e) require a connection between the discrimination, discipline, or penalty and the complainant's exercise of rights under Part 1 or Part 2 of the *FPSLRA*. Mr. Skinner led no evidence that any discipline or penalty imposed on him by the Institute was connected, in any way, with his exercise of a right under Part 1 or Part 2.

[724] The arguments outlined the circumstances surrounding the note to stewards and stated that under the circumstances, it was not a form of intimidation or coercion prohibited under s. 188(e).

C. The complainant's reply argument

[725] Concerning Ms. Denton's additional harassment allegations against Mr. Skinner, PIPSC's submissions state that she alleged that he retaliated against her for making the initial harassment complaint. He argued that that was not in evidence and that he was not aware that she had made the harassment complaint against him.

[726] The entire complaint process has to be free of discrimination at each step, from the initiation of the complaint to the end of the process. If the evidence shows an apprehension of bias, it is an indicator that the complaint process is discriminatory.

[727] The investigator erred in the Denton preliminary report by stating that Mr. Skinner singled Ms. Denton out by denying her entrance to the hospitality suite. As everyone agreed that there was no hospitality suite, how could Mr. Skinner defend himself against allegations of a denial of entry, for which he was disciplined?

[728] The investigator interviewed Mr. Jones and Ms. Spacek even though they were not witnesses in any of the complaints and were Mr. Skinner's political adversaries.

One can conclude only that they were interviewed as character witnesses. However, the character witnesses submitted by Mr. Skinner were not interviewed.

[729] Mr. Skinner submitted that he did not deny making the statements indicated in the investigation reports that he told Ms. Mertler to "wake the f*** up" and called Ms. Friesen a hypocrite and that Ms. Denton was not welcome in the hospitality suite. The investigator did not consider the context of those remarks. For example, an audio tape of the BOD meeting would have shown Ms. Friesen attacking Mr. Skinner, which led to him calling her a hypocrite.

[730] Mr. Skinner disagreed that an investigation report submitted by an independent investigator is final and will be accepted as submitted. He contended that PIPSC policy requires that if it has been read, it should be subject to critical review and not accepted as submitted. Reading a report is different from subjecting it to critical review.

[731] Mr. Skinner addressed PIPSC's submission that it was not a breach of confidentiality for an EC member, Ms. Bittman, to advise the BOD that Ms. Friesen had made a complaint against him. He submitted that he had been disciplined for the same thing, namely, advising the BC/Yukon Regional Executive of complaints against him, without naming names.

[732] PIPSC's concern as to the confidentiality of messages to stewards and branch executives about Mr. Skinner in its submissions should also apply to his attempt to obtain witness statements from stewards.

[733] Mr. Skinner submitted that the information he obtained through his ATIP request to the CRA must have originated from a PIPSC officer. PIPSC is responsible for ensuring the confidentiality of such information, and it should be held accountable.

[734] Concerning PIPSC's submission that the EC had the right to rely on the facts found by the investigator, Mr. Skinner said that there were deficiencies in the investigation reports that should have been noted by Ms. Roy or the EC. The most glaring of these was not clearly indicating Ms. Denton's additional allegations against Mr. Skinner.

[735] Mr. Skinner argued that PIPSC's submission is incorrect that Ms. Bittman testified that Ms. Daviau had received calls and emails from B.C. members stating that they were scared of Mr. Skinner.

[736] Concerning PIPSC's submission that Mr. Skinner had agreed to Ms. Noonan as the neutral third party, he argued that the context was that he was given a list of third parties to be selected on a time-sensitive basis. His suggestions were not accepted by PIPSC. He did not agree to Ms. Noonan. He accepted her because she was the only third party available on a timely basis.

VII. Analysis

A. Burden of proof

[737] The burden of proof in this case was with the complainant, and it is trite to state that mere allegations are insufficient. It is not enough to allege discrimination, intimidation, or coercion in the abstract. The complaint must be tied to evidence in support of the allegations. As was stated as follows in *Corbett*, at para. 20:

> ***20*** *Parliament did not endow the Board with the authority to sit in appeal of a trade union decision or to allow it to control the content of a trade union constitution (*Beaven v. Telecommunications Workers Union *(1996), 100 di 96 at paras. 40 and 41 and* Mangatal v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW - Canada) *(1997), 105 di 1 at para. 19). It is not enough to allege discrimination, intimidation, or coercion in the abstract. It must be tied to testimony ….*

1. The Board's jurisdiction

[738] The complainant made his unfair-labour-practice complaint under s. 190(1)(g) of the *FPSLRA*, which alleges a violation of s. 185. Section 185 in turn states that an unfair labour practice means anything that is prohibited by ss. 186(1) or (2), 187, 188, or 189(1). The complaint does not specify the sections it engages, which caused the respondent a substantial degree of frustration.

[739] Section 186 is restricted to actions of the employer or of those acting in a managerial or confidential capacity and so is not relevant to this complaint.

[740] Section 187 of the *FPSLRA* prohibits an employee organization and its officers from acting in a manner that is arbitrary or discriminatory or that is in bad faith in the representation of any employee in the bargaining unit. The facts in this case do not support an unfair-labour-practice complaint under this section as the facts concern internal political disputes and not the representation of Mr. Skinner by his union.

[741] Mr. Skinner's issues with PIPSC best fit under s. 188 of the *FPSLRA*, which provides as follows:

> ***188*** *No employee organization and no officer or representative of an employee organization or other person acting on behalf of an employee organization shall*
>
> ***(a)*** *except with the consent of the employer, attempt, at an employee's place of employment during the employee's working hours, to persuade the employee to become, to refrain from* b*ecoming, to continue to be or to cease to be a member of an employee organization;*
>
> ***(b)*** *expel or suspend an employee from membership in the employee organization or deny an employee membership in the employee organization by applying its membership rules to the employee in a discriminatory manner;*
>
> ***(c)*** *take disciplinary action against or impose any form of penalty on an employee by applying the employee organization's standards of discipline to that employee in a discriminatory manner;*
>
> ***(d)*** *expel or suspend an employee from membership in the employee organization, or take disciplinary action against, or impose any form of penalty on, an employee by reason of that employee having exercised any right under this Part or Part 2 or 2.1 or having refused to perform an act that is contrary to this Part or Division 1 of Part 2.1; or*
>
> ***(e)*** *discriminate against a person with respect to membership in an employee organization, or intimidate or coerce a person or impose a financial or other penalty on a person, because that person has*
>
> > ***(i)*** *testified or otherwise participated or may testify or otherwise participate in a proceeding under this Part or Part 2 or 2.1,*
> >
> > ***(ii)*** *made an application or filed a complaint under this Part or Division 1 of Part 2.1 or presented a grievance under Part 2 or Division 2 of Part 2.1, or*
> >
> > ***(iii)*** *exercised any right under this Part or Part 2 or 2.1.*

[742] Section 188(a) does not apply to the facts of this case and was never argued by the complainant. With respect to s. 188(b), I find that the facts do not support any allegation that he was expelled or suspended from membership in the employee organization. While the Institute did impose restrictions on how he was to carry out the duties of his office, his membership was never suspended, and he was never expelled. Indeed, he remains a retired member of the Institute to this day. As for ss.

188(d) or (e), I find that Mr. Skinner did not lead evidence that would allow me to conclude that one of the prohibited activities occurred as a result of the exercise of his rights under the *FPSLRA*.

[743] In the case of unfair-labour-practice complaints, the Board does not possess unlimited jurisdiction to review the actions of bargaining agents. With respect to such complaints that allege a violation of s. 188(c) of the *FPSLRA* in particular, which forms the majority of Mr. Skinner's allegations, the Board's jurisdiction has been defined by its earlier cases.

[744] In *Strike*, the Board found that it could examine the discipline imposed in order to decide whether the decision-making process was discriminatory. It held that while the complainant might have disagreed with the results of the process, nonetheless, the process had been followed with respect to him.

[745] In *Myles*, at para. 108, the Board rejected the contention that complaints made under s. 188(c) include allegations of bad faith or arbitrariness, pointing to the wording of s. 187, which specifically mentions such conduct as the basis for a complaint. The Board went on to state that arbitrary or bad-faith conduct could be an indication of discrimination but is not discriminatory in and of itself.

[746] In *Gilkinson*, the Board reiterated its very narrow jurisdiction to interfere in the internal affairs of employee organizations. After it reviewed a definition of "discrimination", its case law, and jurisprudence in general, the Board defined "discrimination" as an illegitimate distinction based on irrelevant grounds. It stated that the allegations of the complainant in that case concerned a power struggle within the organization and that his perceptions of a "control group" and "minority group" could not, even if proven, form the basis of a complaint under s. 188(c).

[747] In *Leach v. Fortin*, 2018 FPSLREB 67, the complainant was a member of the Public Service Alliance of Canada (PSAC) and, similarly to Mr. Skinner, had held a number of positions with a local of one of its components. After receiving three complaints about him, one of which was made by the local's president, the component's national executive voted to remove the complainant from his official capacity, and the PSAC suspended his membership for two years. The complainant made an unfair-labour-practice complaint pursuant to s. 188(c) of the *FPSLRA* against the local's president and the component's national president, alleging that they took

disciplinary action against him by applying the standards of discipline in a discriminatory manner. The Board held that the scope of the term "discriminatory manner" in s. 188(c) is not limited only to discriminatory practices under the *Canadian Human Rights Act* (R.S.C., 1985, c. H-6; *CHRA*) but adopted the finding in *Gilkinson* that it also extends to illegitimate distinctions based on irrelevant grounds. However, the Board also found that the complainant did not advance allegations of this sort and that the essence of his allegations was simply that the respondents applied the component's by-laws and the PSAC's constitution incorrectly and arbitrarily. Without more, there was no arguable case that disciplinary action was taken against him in a discriminatory manner within the scope of s. 188(c). The Board concluded that it had no authority to deal with the issues that he raised.

[748] With respect to the interpretation of s. 188(c), the complainant referred only to the Board's decision in *Strike* in support of his position that such complaints also included action that was arbitrary or in bad faith and that what constitutes discriminatory behaviour encompasses a wide spectrum of behaviour such as carelessness, arbitrariness, gross negligence, actual or perceived bias, bad faith, dishonesty or a lack of duty of care.

[749] The Board has considered the scope of the meaning of "discriminatory" for the purposes of s. 188(c) in *Myles* and also in *Bremsak v. Professional Institute of the Public Service of Canada*, 2009 PSLRB 103.

[750] In *Myles*, at para. 108, the Board rejected the contention that complaints made under s. 188(c) include allegations of bad faith or arbitrariness, pointing to the wording of s. 187, which specifically mentions such conduct as the basis for a complaint. Given the absence of the words "bad faith" and "arbitrariness" in s.188(c), the Board concluded that while such behaviours could be an indication of discriminatory action, they are not, in and of themselves, discriminatory.

[751] I note that the provisions with respect to complaints of unfair labour practices underwent a significant change in 2005, when the *Public Service Staff Relations Act* (R.S.C., 1985, c. P-35; *PSSRA*) was repealed and replaced by the *PSLRA*, a predecessor of the current *FPSLRA*. Section 187 is, in essence, a continuation from the previous regime, its wording being virtually identical to s. 10(2) of the *PSSRA*. However, there was no equivalent in the *PSSRA* to the prohibitions in s. 188 of the *FPSLRA*. These

grounds for an unfair labour practice complaint were first introduced in 2005. As noted in *Myles*, the provisions of s. 188 are materially identical to those of the *Canada Labour Code* (R.S.C., 1985, c. L-2). For that reason, when considering the meaning of "discriminatory" in s. 188, it is worth examining closely how that concept was understood by the (as it was then named) Canada Labour Relations Board (CLRB).

[752] As noted in *Bremsak*, the CLRB considered the meaning of 'discriminatory'; in *Beaudet-Fortin v. Canadian Union of Postal Workers*, [1997] C.L.R.B.D. No. 23 (QL). At paragraph 83 of that decision, the CLRB noted it had "always given a broad interpretation to the notion of discrimination …". In that decision, the CLRB adopted the definition of "discrimination" as set out in *McCarthy,* [1978] 2 Can LRBR 105, which found that "discriminatory" means a distinction which is made on grounds that are "illegal, arbitrary or unreasonable". In the context of the matter before it, the CLRB endorsed the meaning of those terms described in *McCarthy* as follows:

> *… A distinction is most clearly illegal where it is based on considerations prohibited by the Human Rights Act, S.N.S., 1969, c. 11, as amended; a distinction is arbitrary where it is not based on any general rule, policy or rationale; and a distinction may be said to be unreasonable where, although it is made in accordance with a general rule or policy, the rule or policy itself is one that bears no fair and rational relationship with the decision being made …*

[753] I am of the view that the Board should adopt a similar approach to the concept of discrimination when considering the meaning of s.188(c) under the *FPSLRA*. As set out in *Bremsak*, I agree that not every distinction is necessarily discriminatory. However, when a complainant has met the burden of establishing that the distinction complained of was illicit, arbitrary or unreasonable in the circumstances of a specific complaint, the complainant will have established that the respondent acted in a discriminatory manner for the purposes of s. 188(c). It is unnecessary at this point, and it would be imprudent for the Board, to try to define rigidly what constitutes an illicit, arbitrary or unreasonable distinction under s. 188(c). The Board will have further opportunities to assign meaning to those concepts in light of the specific circumstances of each future complaint that will come before it.

[754] For the reasons that follow, I dismiss this complaint, as the allegations either were not proven or did not fall within the Board's jurisdiction under s. 188(c).

[755] Broadly speaking, I find that the complainant's allegations involved a political power struggle and the sort of "control group" versus "minority group" allegations that were found not within the Board's purview in *Gilkinson*.

[756] The genesis of this unfair-labour-practice complaint were the three internal complaints made against Mr. Skinner and the discipline that resulted from the Denton final report, which found that he had engaged in retaliation for his involvement in the hospitality suite incident. Mr. Skinner detailed in an exhaustive manner his complaints with the wording of the complaints and the additional allegations, the investigation process, the final reports, and the manner in which they were dealt with by the EC and in the appeal process. However, the evidence did not disclose that the process was applied to him in a discriminatory manner. Indeed, it disclosed that the process was followed and applied as written in the Institute's policies and by-laws. While Mr. Skinner may feel that the process could have been improved with respect to how it dealt with conflict-of-interest allegations, witness statements, or the application of a disciplinary grid, there was no evidence that the process was not followed or that it was applied in a discriminatory manner. For Mr. Skinner, this complaint is not so much about the discriminatory application of the standards of discipline to him but about what he perceived as uneven results and the Institute's failure to conduct a wide-ranging investigation into the behaviour of several individuals, who he felt had behaved badly.

[757] The main thrust of Mr. Skinner's allegations was revealed in the testimony of his witnesses, who argued that he had been on the losing end of a political vendetta. Political favouritism, without more, does not constitute an unfair labour practice under the *FPSLRA*.

[758] It should also be noted that with respect to the Friesen complaint, the evidence disclosed that the complaint was dismissed and that no discipline for it was ever imposed on Mr. Skinner, which makes that internal complaint irrelevant to this decision.

[759] I find that Mr. Skinner's many allegations about the facts and context of events before, during, and after the filing of the internal complaints are, at their core, political in nature. At several points, both during the investigation and in the hearing, Mr. Skinner characterized the facts as political in nature both in his testimony and in

his written submissions. However, my jurisdiction under the *FPSLRA* in this matter is limited to allegations involving the prohibition set out in s. 188(c). It is not enough to make allegations; the complainant bears the burden of establishing that discipline was imposed on him in a discriminatory manner.

[760] I further find that Mr. Skinner overestimated the Board's jurisdiction in unfair-labour-practice complaints under s. 188(c) when he referred to having "appealed the disciplinary process to the Board" in the present complaint.

[761] As argued by the Institute, it is well established that unfair-labour-practice complaints under s. 188(c) are not means for complainants to have their entire disciplinary process reconsidered *de novo* by the Board. Such complaints, involving s. 188(c), are not an opportunity to appeal a disciplinary decision imposed by an employee organization merely because the person being disciplined disagrees with the decision. A substantial portion of the complainant's arguments in the present complaint were in furtherance of his argument that the Board could in fact consider a broad range of issues that did not fall under the prohibition against the discriminatory application of PIPSC's standards of discipline. I reject his argument on this point and find that I have jurisdiction only to consider matters that fall under the wording of s. 188(c).

[762] With respect to PIPSC's "standards of discipline", to follow the wording in s. 188(c), the discipline in question can refer only to the discipline imposed on the complainant as a result of the investigator's findings in the Mertler and Denton complaints, which was twofold. First, Mr. Skinner was to provide an apology to Ms. Mertler and Ms. Denton, and second, he was to undergo sensitivity training.

[763] With respect to the requirement to provide an apology, I find that no discrimination was proven. Such apologies were common currency within PIPSC at the time, and Mr. Skinner did not prove his allegations that the apology process was applied in a discriminatory manner. His draft apology was rejected for a good and sufficient reason, as I find that it reads more in the nature of a reiteration of his position on the complaints as opposed to anything close to a true apology.

[764] With respect to the requirement for sensitivity training, I also find no discrimination in the application of PIPSC's standards of discipline. While the requirement might have had less currency at the time than providing apologies, it was

not unheard of, as Mr. Corbett testified that he had been involved in such a measure. Regardless, and as pointed out by Ms. Noonan in the appeal decision, times have changed with respect to how matters of incivility are dealt with, and I find no discrimination with respect to PIPSC's decision in this respect. The evidence disclosed that Mr. Skinner's conduct had caused issues within the Institute in the past and that there was every reason to believe that from both the report and the manner in which he addressed the issues, such issues would continue unless they were dealt with. As Ms. Noonan found, the requirement for sensitivity training was rationally connected to the problem at hand.

[765] If there was no discrimination under the *FPSLRA* with respect to the EC's decision to impose discipline (the standards of discipline), I see no issue to be taken with the Institute's appeal process and its result. In any event, all Mr. Skinner's allegations with respect to the appeal process referred to his dissatisfaction with the process itself and did not involve the application of the standards of discipline.

[766] Mr. Skinner's focus on his dissatisfaction with the process was evident from the filing of the present complaint. As I have outlined earlier in this decision in the summary of the complaint, he vigorously and at length contested the process applied to him without any evidence that it had been applied in a discriminatory manner. His issues were more concerned with the decisions made against him during the application of the process.

[767] Although Mr. Skinner might have considered disciplinary the Institute's decision to have Mr. Hindle attend meetings at which Mr. Skinner would be present, there is no evidence that the Institute applied discipline to him in this respect. It appears to me that Mr. Hindle's attendance at meetings was an internal and administrative measure for the purpose of observing the interactions of BC/Yukon Regional Executive members. The Institute was entitled to monitor the functioning of its constituent elements, and the evidence established support for its decision in this matter. Even should its decision be viewed as part of the application of its standards of discipline, I find that it was entirely supported, reasonable, and not discriminatory.

[768] I have already examined the facts of this case in relation to the wording of the unfair-labour-practice provisions of the *FPSLRA* and have found that they do not support a violation of ss. 188(a) and (b). With respect to the allegations concerning ss.

188(d) and (e), I have concluded that the penalty imposed on Mr. Skinner was not connected to the exercise of his rights under Part 1 or Part 2 of the *FPSLRA*. For the reasons already stated, as well as for those that follow, I conclude that the complainant's allegations either fall exclusively within s. 188(c) and were not proven, or do not come within the Board's jurisdiction.

[769] While that disposes of the present complaint in general terms, I acknowledge that the complaint is not as straightforward as that analysis would indicate. I turn now to its details, to address the complainant's allegations in a more fulsome manner. As part of my jurisdiction, I can address only the allegations raised in the complaint. I have restricted myself to considering only those allegations in these reasons, and I have not compared the complaint with Mr. Skinner's arguments, to address every one of his allegations.

[770] The Board's Form 16, the completion of which was required of the complainant when he made his complaint, asks at Part 4 that complainants write a concise statement of each act, omission, or other matter complained of, including dates and the names of those involved. Mr. Skinner completed Part 4 by writing 29 paragraphs over 7 pages.

[771] At paragraph 1, the complainant in effect summarized his issue by indicating that the EC had bullied and harassed him. He then named Ms. Daviau, Ms. Bittman, and Ms. Friesen, stating that as friends, they had colluded in an effort to intimidate, belittle, and humiliate him and that they had tried to ruin his reputation as a result of a political vendetta. No mention of discrimination is made in the first paragraph or in the rest of the form, although it makes extensive references to PIPSC's by-laws as well as the *Canada Not-for-profit Corporations Act*.

[772] The remainder of the complaint's seven pages are devoted to outlining different actions that support the allegation in paragraph 1. It has several subheadings, titled "Complaints filed by Friesen, Mertler and Denton were Encouraged by EC", "Procedural Unfairness, Bias and Denial of Natural Justice during the Investigation", "Discipline was imposed by EC while I was appealing their Decision", and finally, "Defacto [*sic*] Dismissal". Despite the subheadings, many issues are repeated from several perspectives and return in other subheadings, making an analysis difficult. I will

address each of Mr. Skinner's four subheadings before returning to address paragraph 1 of his complaint.

2. First subheading

[773] The first subheading indicates that the EC encouraged the three internal complaints made against Mr. Skinner. First, on a purely factual basis, I find that no evidence of any EC "encouragement" has been proven. The evidence indicates that all three complaints were the result of personal interactions between Mr. Skinner and the authors of the complaints, and Mr. Skinner had admitted that the related incidents occurred. No evidence was entered suggesting that any member of the EC was behind filing the complaints. Having found no evidence of collusion or encouragement on the part of any EC members, whether individually or collectively, I am unable to conclude that there was any discriminatory conduct in the internal complaints being made. In any event, encouragement of internal complaints does not constitute discipline and therefore not within the Board's jurisdiction.

[774] Mr. Skinner complains that the complaints were improperly allowed to proceed despite being frivolous and vexatious, as stated at paragraph 2 of Part 4 of his complaint. I find that this allegation is also unsupported. The complaints and additional allegations, together with Mr. Skinner's correspondence with many people, his counter-complaints and additional allegations, the investigation report, and his admissions all indicate that PIPSC had more than sufficient evidence on which to investigate. I find that he did not prove that the complaints were frivolous or vexatious in nature. Instead, they resulted from interactions to which he admitted.

[775] Paragraph 2 of Part 4 of his complaint also refers to a breach of confidentiality in the disclosure of private information to the BOD with respect to Ms. Friesen's complaint against him, in violation of a PIPSC by-law. As the Board has stated, it is not my role to review the internal functioning of an employee organization in the absence of any violation of the *FPSLRA*. I find that this allegation does not fall under s. 188(c) of the *FPSLRA*. The complainant has not alleged disciplinary action, nor that the action (even if it could be said to be disciplinary) was imposed in a discriminatory manner.

[776] In paragraph 3 of Part 4 of his complaint, Mr. Skinner indicates that the EC ignored his objections with respect to bias and conflict of interest. He alleges that had his objections been considered, the complaints would not have been investigated, and

the BOD would simply have ordered him to apologize, as had been done in the past. Aside from this conclusion being entirely conjectural, it discloses no violation of the *FPSLRA*; in his complaint of "ignoring objections" it is neither alleged, nor is it discernible that disciplinary action of any kind was imposed in a discriminatory manner. With respect to bias, there was an absence of evidence of any bias on the part of individuals who played a role in this matter. As for the allegations of conflict of interest, political opposition alone does not automatically constitute a conflict of interest, and I find that none has been proven by the complainant. Also, as the complainant points out in the next paragraph of his complaint, the objections were accepted during the hearing of his appeal, and the matter was remitted to a neutral third party as a result, thus curing any defect in the process.

[777] In paragraph 8(d) of Part 4 of the complaint, the complainant refers to the fact that the neutral third party "claimed" that the allegations of conflict of interest and bias were outside her limited mandate. He also complains that the EC sat in on the BOD's discussion of his appeal, which he alleges was a clear conflict. Therefore, his allegations concern the EC's decision to investigate the complaint, its role in the appeal process, and Ms. Noonan's failure to consider the issue during the appeal process.

[778] Mr. Skinner raised the issues of conflict of interest and bias early and often. He was clear from the beginning about his feelings on these issues and expressed his sentiments frequently. The references that follow comprise only some of his written communication with PIPSC on these issues, and I will refer only to those that are relevant to this decision.

[779] During the internal PIPSC process, in addition to the allegations set out in this complaint, Mr. Skinner also alleged that several BOD members were in a conflict of interest in hearing his appeal of the EC's decision to impose corrective measures. But this allegation does not form part of the complaint, even if it is contained in the documentation related to it. There is also no allegation whatsoever that the removal of those who were biased would have resulted in a different outcome.

[780] In an email dated July 10, 2013, to Ms. Roy (Exhibit 1, tab 13), Mr. Fernando, who then represented Mr. Skinner, outlined the issue of conflict of interest from Mr. Skinner's perspective. He stated that the genesis of the complaint was a proposed constitutional change to reduce the number of PIPSC vice-presidents, which

Mr. Skinner and the BC/Yukon Regional Executive supported. This is the same allegation found in the first paragraph of Part 4 of his complaint. He alleged that as the current vice-presidents enjoyed salary, benefits, and other perks as a result of holding office, it was in their interest to stop Mr. Skinner from supporting his region's proposed changes and that therefore, they were in conflict. Mr. Fernando repeated the allegations that the entire BOD was in a conflict of interest with respect to the Denton complaint (Exhibit 2, tab 46).

[781] Mr. Skinner's conflict of interest and bias allegations centre on what he alleges were friendships within the EC, BOD, and the BC/Yukon Regional Executive. He wrote to Ms. Roy on July 10, 2013, with respect to the Friesen and Mertler complaints and the issue of a conflict of interest (Exhibit 2, tab 96). He alleged that Ms. Friesen was supported by Ms. Bittman and that she was close friends with Mr. Burns, another PIPSC vice-president. Therefore, any role played by the EC would be in his words a "clear and gross conflict of interest" and in breach of the principles of natural justice.

[782] In an email to Ms. Roy of February 25, 2014, Mr. Skinner outlined his conflict-of-interest objections in detail, over four pages. He set out why he considered Ms. Friesen to be in conflict of interest with respect to the Denton and Mertler matters and why he considered Ms. Bittman, Mr. Burns, and Ms. Daviau to be in conflict of interest as well.

[783] By the complainant's account, his allegations concern political wrangling, and I find that they do not indicate anything that could be termed as disciplinary action taken in a discriminatory manner under s. 188(c) of the *FPSLRA*. The Board is not mandated to be the arbiter of political or personal disputes within employee organizations in the absence of very specific factors. Even if Mr. Skinner's motion to reduce the number of vice-presidents caused friction and even political antipathy towards him, I find that there is no evidence that it played a role in either the EC's decision to investigate the complaints or the attendance of EC members at the BOD meeting; nor does it establish any of the requirements of an unfair labour practice under s. 188(c) of the *FPSLRA*.

[784] With respect to the allegations that friendships within PIPSC in some way led to actions which amounted to the basis of an unfair-labour-practice complaint, I was presented with no evidence of it. Mr. Skinner essentially admitted to the factual allegations set out in the three internal complaints as to how he conducted himself

with the complainants. The complaints were investigated and the results appealed. I have no evidence that these actions were in any way the result of disciplinary action being taken in a discriminatory manner.

[785] On May 8, 2014, Mr. Skinner emailed the BOD, stating that had the three complaints against him gone to the BOD rather than the EC, he believed that they would not have gone forward. He pointed to the "unbelievably harsh punishment" meted out as proof of conflict of interest and bias. I disagree. Although the sensitivity training course was a new form of discipline, I can only agree with Ms. Noonan when she found that advancements in dealing with personal communication had been made and that there was a clear nexus between the results of the investigation and the imposition of the training course. The mere fact that a new remedial measure was imposed by PIPSC is not proof of discipline having been applied in a discriminatory manner, given the connection with the facts set out in the investigation report.

[786] Ms. Noonan did mention the conflict-of-interest and bias issues in her decision on the appeals related to the Mertler and Denton complaints (Exhibit 2, tab 83). She stated that as the BOD had taken the step to keep the appeal process at arm's length, the concerns had been heard and addressed. I agree.

[787] Although on a few occasions, Mr. Skinner had mentioned the fact that Ms. Noonan did not delve into the issue of conflict of interest, she explained that her failure to was the result of a very clear mandate in accordance with PIPSC by-laws. As stated earlier in this decision, and pursuant to the Institute's policy, the BOD's jurisdiction is limited to determining if the EC acted within its mandate, and the EC's mandate is to make decisions that are not arbitrary, discriminatory, or in bad faith. Therefore, when deciding the appeal in the place of the BOD, Ms. Noonan appropriately acted within her mandate. I find that Ms. Noonan appropriately acted within her mandate.

[788] There was some indication in the evidence that Mr. Skinner was of the opinion that the acrimony between the parties was the result of anti-male sentiment within the political levels of PIPSC. First, at paragraph 5 of Part 4 of his complaint, he alleged that the investigator was biased against men. In addition, on June 19, 2014, Mr. Corbett wrote a "statement" to Mr. Lazzara (Exhibit 2, tab 102) setting out his belief that Ms. Bittman was in fact in a conflict of interest that she refused to recognize, which

originated from her antipathy towards certain individuals, including Mr. Skinner. Mr. Corbett stated this: "Further, I have also been in the presence of Ms. Bittman when she maligned members (usually male) … whom she has shown explicit hatred for or had taken issue - most notably Mr. Skinner." Furthermore, as indicated in one of the investigation reports, in a written statement dated November 21, 2013, Mr. Skinner referred to one of the complainants as being a lesbian and as having issues with men.

[789] In an email addressed to the BOD dated August 13, 2014 (Exhibit 2, tab 103), Mr. Skinner referred to the investigator as "the goofy feminist investigator you hired to perform this farce of an investigation". A month later, in his letter to Ms. Roy dated September 10, 2014 (Exhibit 1, tab 11), he referred to Ms. Price as "the feminist investigator PIPSC hired."

[790] I am unable to find that the complainant has made out a *prima facie* case of discrimination on the basis of gender within the meaning of the *CHRA*. The complainant has not adduced any evidence in support of such a complaint. As set out above in *Corbett*, it is not enough to allege discrimination – it must be tied to testimony.

[791] Aside from Ms. Price's alleged sexist bias, paragraph 5 of Part 4 of the complaint also alleged that Mr. Skinner was denied any say in the selection of the investigator. In its response to the complaint, the Institute argued that it had no obligation to consult Mr. Skinner on this matter and that it is not in the habit of doing so. On October 30, 2013 (Exhibit 2, tab 24), Ms. Roy wrote to the complainant's representative, enclosing a copy of the terms of reference for Ms. Price and stating that in selecting her, it had consulted with experienced union-side counsel in B.C. and had selected Butler Workplace Solutions on the basis of experience, qualifications, and availability. Again, Mr. Skinner's allegation in the complaint merely takes exception to PIPSC having followed its policy and practice, and there is no allegation or proof of any discipline having been imposed in a discriminatory manner by the Institute. I have no reason to discount or discredit Ms. Roy's statement as to how the selection of the investigator was done fairly; nor can I question Ms. Price's qualifications. There is no evidence on which to support a finding that the choice of investigator was discriminatory.

[792] In paragraph 5 of his complaint, Mr. Skinner alleged that the investigator "… makes comments on behavioural issues only a psychiatrist or registered psychologist

is qualified to make." Factually, I am unable to come to this conclusion and find that the comments of the investigator were not of a medical nature. Further, I can find no discrimination under either the *CHRA* or the application of the standards of discipline in s. 188(c). While Mr. Skinner might have taken exception to the different characterizations of his behaviour by the investigator, I see no evidence of any violation of the *FPSLRA*.

[793] In paragraph 6 of Part 4 of his complaint, the complainant set out his issues with respect to Ms. Noonan. He stated that only names of outside counsel favourable to the Institute were acceptable. He expressed his concern that the choice of Ms. Noonan was perhaps tainted by a financial interest on her part for continued contracts from the Institute. As stated earlier in this decision, Mr. Skinner's representative advised the Institute that the choice of Ms. Noonan was acceptable. There is also a complete absence of evidence with respect to Ms. Noonan and the allegation of improper financial interest on her part leading to her being biased. The only evidence on this issue is the fact that she works as a neutral third party and therefore, like anyone else in her profession, might be of interest to PIPSC in the future. This does not constitute an improper financial interest. In any event, I can find no issue of discipline having been applied in a discriminatory manner in her hiring.

[794] Mr. Skinner also complained that he was not permitted to make verbal representations to the BOD in his appeal and that the terms of reference were too limited, which I take to be a reference to the fact that Ms. Noonan was unable to inquire into the conflict-of-interest and bias allegations, the legal aspects of which I dealt with earlier in this decision. Furthermore, it is not entirely factual that Mr. Skinner had no say in setting the mandate. Ms. Roy did indicate via email that she would consider his input but was clear on the limits of any mandate (Exhibit 2, tab 78), given the policies involved.

[795] As for his inability to make verbal representations, Mr. Skinner raised this issue with Ms. Roy before the appeal was heard. In their email of June 16, 2014 (Exhibit 1, tab 6), Mr. Lazzara and Mr. Tait point out that Ms. Roy would address the BOD with her opinion summary and request the right to do the same. On June 18, 2014 (Exhibit 2, tab 130), Ms. Roy replied to Mr. Tait, indicating that the *Dispute Resolution and Discipline Policy* provided for the opportunity to be heard through written submissions and that past requests to provide oral representations had been consistently denied.

On the basis of this evidence, I can find nothing discriminatory in the application of PIPSC's policies on oral representations to Mr. Skinner and therefore find no violation of the *FPSLRA*.

[796] In the final paragraph of his complaint, under the section titled "Complaints filed by Friesen, Mertler and Denton were Encouraged by EC", the complainant outlined several issues: a breach of confidentiality, the failure of PIPSC to place the disciplinary process in abeyance despite him advising it that he "was appealing; including to the PSLRB", posting in the Virtual Binder, and the sending of an observer to meetings he attended.

[797] Concerning a breach of confidentiality, paragraph 7 of Part 4 of the complaint sets out two incidents in which Mr. Skinner's confidentiality was allegedly breached. In the first, he alleged that on June 24, 2013, Ms. Bittman informed the BOD of the filing of the Friesen complaint that June, in violation of PIPSC by-law 24.1, parts (a), (d), (j), (m), and (o). Secondly, he referred to an incident in August 2014 in which the Okanagan and Yukon Branch presidents were informed that he was being disciplined for "founded complaints", despite there not having been a finding of harassment. I did not hear any evidence or argument that would lead me to conclude that either incident was the result of any disciplinary action applied in a discriminatory manner.

[798] On the issue of appealing the discipline, Mr. Skinner and his representatives raised this objection on several occasions as well as in the complaint. As a result of the EC's decision to not place the disciplinary process in abeyance, he was prevented from attending several meetings, such as the AFS subgroup meeting, the AGM of the Okanagan branch, the Yukon branch and Yukon Hospital Corporation group AGM, and a meeting related to the Government of Canada Workplace Charitable Campaign.

[799] I can find no basis on which to find that the EC's decision to continue the disciplinary process in spite of Mr. Skinner's appeal constituted the application of discipline in a discriminatory manner. It is trite law that decisions of administrative tribunals stand in the absence of a court order granting a stay. The fact that an unsuccessful litigant has exercised his or her right to continue a process does not automatically grant the litigant a stay.

[800] With respect to the issue of the posting in the Virtual Binder, the complaint referred to an incident that occurred when Mr. Skinner's appeal was to be heard. At

that time, copies of the final report and his appeal were posted unmarked in the Virtual Binder for any director to copy. The complainant was advised that he would receive an apology for this lapse (Exhibit 1, tab 7), and while it was in fact received two months later, he alleged that the damage had already been done. The apology (Exhibit 1, tab 20) was written to Mr. Skinner by Mr. Gillis on August 20, 2014. He began by apologizing for the delay in the matter, without however offering any explanation for it. He then apologized for "the inadvertent posting of documents" pertaining to Mr. Skinner's appeal, stating that the documentation had been removed and that paper copies retrieved from each BOD member at the meeting had been destroyed. He closed by stating that steps would be taken to ensure that it never happened again.

[801] While the posting was no doubt inappropriate, and the apology took longer than Mr. Skinner felt was appropriate, I am left without any evidentiary or legal basis on which to conclude that either event was the result of a violation of the unfair-labour-practice provisions of the *FPSLRA*. It is not for the Board to evaluate any political damage done to Mr. Skinner in the absence of any violation of the *FPSLRA*.

[802] Lastly, paragraph 7 of Part 4 of the complaint alleged that Mr. Hindle, as required by PIPSC, had attended regional council and executive meetings as an observer, which was intended to intimidate, humiliate, and embarrass Mr. Skinner into resigning. PIPSC decided to take this measure, given the fractured nature of the political environment. I was not presented with any evidence by which it can be characterized as a violation of the *FPSLRA*. The BC/Yukon Regional Executive made an internal complaint on this and other issues, and on May 30, 2014 (Exhibit 2, tab 119), Ms. Roy advised it that the complaint had been summarily dismissed on the basis that it was frivolous and without merit, and she set out the reasons for which that decision was made. She stated that having an observer attend meetings was not disciplinary and that it was the prerogative of the EC and BOD to engage in the affairs of any of its subordinate constituent bodies. Furthermore, decisions to provide guidance, mentoring, and oversight had been made in the past. No evidence to dispute this was presented.

[803] While the presence of an observer was no doubt embarrassing to Mr. Skinner, there is no evidence of any plot to have him resign. Even if there were such evidence, I would not have jurisdiction over it, in the absence of evidence that it was the result of the application of PIPSC's standards of discipline in a discriminatory manner. Mere

plotting without evidence of discipline imposed in a discriminatory manner within the meaning of s. 188(c) is not a matter with which the Board can concern itself.

3. Second subheading

[804] The second subheading under Part 4 of the complaint is titled, "Procedural Unfairness, Bias and Denial of Natural Justice during the Investigation".

[805] In paragraphs 8(a) and (b), Mr. Skinner deals with witness issues, alleging that the investigator ignored his key witnesses yet placed weight on evidence from his political adversaries or people with whom he had had personal conflicts, "without putting those conflicts into context." He also complained that the investigator noted other conflicts from his past but did not note that most of them had been resolved easily, without any hard feelings. He stated that, "in the union business you always have conflicts." He then stated that one of his witnesses was ignored while the statement given by another was missing from the report. He complained that he was not advised of the need for character witnesses and finally that directors who had been unfavourable to him were interviewed without him being notified, despite him being told that no director would be interviewed, as they were in conflict. Having considered all of these issues relating to the internal investigation process, I am unable to find any evidence of a violation of the *FPSLRA* in this respect.

[806] In paragraph 8(c) of Part 4 of the complaint, the complainant set out his issues with witness statements and specifically the fact that they were not provided to him. At the end of the paragraph, he alleged this in bolded and underlined type: "The investigator's record of witness statements is inaccurate at best and fabricated at worst."

[807] As stated in his complaint, Mr. Skinner raised this issue early in the process and was advised by the investigator that witness statements would not be provided. He discussed the issue of the disclosure of witness statements with Ms. Roy in March of 2014 (Exhibit 1, tab 40), when she wrote to him about several issues, one of which was his request for disclosure from the investigator of "all the evidence gathered", whether written or oral. Ms. Roy stated that in his as in every other case, the investigators did not provide PIPSC with the information they gathered, as that information does not form part of the investigation report. She then stated the following:

> *Natural justice requires that the process followed by the investigator allow [sic] you to respond to the specific allegations that were filed against you, including by allowing you to review any supporting evidence being relied upon in support of these allegations. It is our view the process in place meets those requirements.*

[808] I have been provided with no evidence that the investigative process was applied in a manner that was discriminatory to the complainant. There is no allegation that the witness statements were provided to anyone involved and no evidence that the process was applied unevenly. While Mr. Skinner might well have objected to the process, disagreement with it is not proof of an unfair labour practice on the part of PIPSC. His allegation of inaccuracy and fabrication is unfounded.

[809] Paragraph 8(d) of Part 4 of the complaint returns to the issue of conflict of interest, which I have already addressed.

[810] In paragraph 8(e) of the complaint, the complainant focused on the procedural aspects of the investigation into his allegation of a lack of a quorum of the BOD, which was an issue he raised early in the investigation and repeated often. For example, in one such email exchange, Mr. Skinner wrote to the BOD on August 13, 2014 (Exhibit 2, tab 103), to complain that rather having "the guts to deal with this at the BOD", it had instead washed its hands of the issue and had "sent it to hired outside counsel." In essence, this issue is part of his objection concerning conflict of interest and bias, as he recognized in the first sentence of that paragraph of the complaint, when he referred to having raised early on the issue of the conflict of interest. Had the EC members he felt were conflicted declared their conflict of interest, the EC would have been without a quorum, and the final reports would then have been sent to the BOD, where, presumably, he believed he would have had a better chance to succeed.

[811] Therefore, the issue of a lack of a quorum is in reality a result of what the complainant alleged were improper conflicts, which I have already addressed.

[812] Further, I find that while Mr. Skinner had reason to raise the issue of conflict of interest, the evidence disclosed that PIPSC was conscious of the issue and that it acted accordingly. For example, in an email to Mr. Fernando on September 9, 2013 (Exhibit 2, tab 98), Ms. Roy advised him that the EC had not had a quorum to deal with issues related to the investigation that had been raised by Mr. Skinner. The evidence disclosed that the Institute had seriously considered Mr. Skinner's issues related to conflict, that

those who were in conflict of interest had declared it and had recused themselves from discussions, and that the Institute's quorum rules had always been respected.

[813] Paragraph 9 of Part 4 of the complaint returns to the issue of conflict of interest in that Mr. Skinner objected to the EC having participated in BOD deliberations on his appeal, during which it was decided to have his appeal dealt with by a neutral third party. While these facts might raise procedural concerns, in my view they do not raise issues that fall under s. 188(c) of the *FPSLRA*.

[814] In paragraph 10 of Part 4 of the complaint, Mr. Skinner alleged that the investigator had exceeded her mandate. He alleged that even if no harassment had been found, nonetheless, the investigator had found him guilty of retaliation over the hospitality suite incident. He alleged that this incident was not part of the investigation, that he was not "formally made aware of this accusation", and that he was not given a chance to respond. Had he been allowed to, he would have defended himself by pointing out that the union's steward-training course advises parties in conflict to separate. Mr. Skinner was strenuously opposed to the finding of retaliation and devoted both significant evidence and argument to the issue.

[815] First, I find that Mr. Skinner did have explicit notice that the matter of retaliation was at issue. In January 2014, Ms. Price wrote to Mr. Tait and used the word "retaliation" explicitly. While Mr. Skinner had already been interviewed, the final report had not yet been released, and I find that it was incorrect for him to suggest that he never had an opportunity to address the issue of retaliation. While he correctly stated that Ms. Denton did not use the word "retaliation" in her additional allegations, nonetheless, she set out her version of the facts with respect to the hospitality suite and its cancellation and the linkage between the cancellation and her making a complaint (Exhibit 2, tab 48). I reject Mr. Skinner's allegation that this issue came as a complete surprise to him and in any manner exceeded the investigator's mandate. Lastly, I reject his allegation that no harassment was found, since the evidence showed that retaliation constituted harassment under PIPSC policy.

[816] The final investigation report into the Denton complaint was issued in early April 2014 and addressed the issue of separating the parties. The investigator found that while Mr. Skinner had an honest belief that more conflict might have arisen had Ms. Denton been permitted in the hospitality suite and that he had been advised by his

former representative to avoid contact with her, he was also aware that no measures to separate the parties had been imposed and that PIPSC had advised them that they were expected to conduct business as usual, in a respectful tone. The investigator found that Mr. Skinner had not sought advice from PIPSC's legal section on Ms. Denton's exclusion and instead had conducted himself contrary to instructions and in a disrespectful manner.

[817] Therefore, the evidence confirms that the investigator acted within her mandate, advised the complainant of the allegation, and gave him an opportunity to address it during her investigation, which he took. I am left with an allegation that is factually inaccurate and that offers not a whit of discipline having been imposed in a discriminatory manner.

[818] In paragraph 11 of Part 4 of his complaint, Mr. Skinner alleged that the EC relied on a claim of a prior inappropriate style of communication to justify the discipline imposed on him. He claimed that it was not an issue that formed part of the investigation and that the 2012 incidents were not put into context and were never investigated. They were merely personal opinions, one of which was the result of political enmity. Lastly, he was given no chance to defend himself.

[819] I have already canvassed these two instances earlier in this decision in the summary of the evidence. Mr. Skinner was frustrated by the EC's focus on his prior behaviour when it refused to broaden the investigation to include what he viewed as the same issue relating to Ms. Friesen.

[820] No evidence was entered of prior complaints on the issue of bad behaviour by Ms. Friesen. I also note that while the EC did take Mr. Skinner's prior behaviour into account when considering how to handle his complaint, the investigator did not delve into this issue and investigated only the complaints.

[821] The minutes of the EC meeting on June 18, 2013 (Exhibit 2, tab 16), shortly after Ms. Friesen made her complaint, outline the basic thrust of her complaint and state that there had been "numerous issues in the past with the respondent" and that there was consensus within the EC that the matter needed to be addressed. The minutes also state that "the Institute is not following its process as we have a repeat offender who harassed people and we are aware of the situation."

[822] The BOD met again on July 3, 2013 (Exhibit 2, tab 20), and the Friesen and Skinner complaints were discussed. The minutes state that at least two warning letters had been sent to Mr. Skinner in the past and that there was a need for the EC to demonstrate leadership in the matter. The minutes also state that "members of BC are afraid to go against P. Skinner as they claim he is a bully and they fear his reprimand." Mr. Corbett, who issued both 2012 warnings, testified that he had no disciplinary intent when he issued them.

[823] I find that given Mr. Skinner's alleged history of an aggressive communication style, whether founded or not, PIPSC was justified in taking prior complaints into account when deciding how to address the complaints. I find nothing discriminatory in PIPSC taking this action. There is no evidence whatsoever that PIPSC's decision was tainted by an improper motive.

[824] In paragraph 12 of Part 4 of his complaint, Mr. Skinner alleged that the EC harassed the BC/Yukon region by ignoring its requests for committee selections and with respect to the Finance Committee in particular, when other regions received their preferred selections.

[825] The BC/Yukon region raised the issue of its alleged harassment in correspondence with the BOD. On February 27, 2014, Mr. MacDougall, on behalf of the region, wrote to the BOD (Exhibit 1, tab 12) to complain that its selection had been ignored but that all other regions had had their selections respected. Mr. MacDougall expressed the region's allegation of political interference. He alleged that the representative selected by PIPSC was someone who most of the BC/Yukon Regional Executive had had no contact with and who to its knowledge had never been involved in any regional activity. Therefore, the region felt that the individual selected was not as qualified as its candidate.

[826] It appears that the issue of committee selection became contentious between the region and the BOD. The same exhibit (Exhibit 1, tab 12) contains documentation outlining a decision made by the BOD in the spring of 2014 to freeze regional funding until the BC/Yukon Regional Executive retracted letters it had apparently distributed about the selection process for members of the Standing Committees of the BOD.

[827] On April 4, 2014, the BC/Yukon Regional Executive wrote to the BOD, formally retracting its earlier letters and admitting that in fact, no political interference had

occurred. The letter stated that the region had operated under the mistaken belief that it had the authority to place its choice of candidates on committees, that now it was aware that the BOD had the full authority to use its judgment to select such members, and that committee chairs consulted only regional directors before making this choice. Finally, the letter also retracted earlier comments on candidate suitability. I find that this letter provides the answer to Mr. Skinner's allegation on this issue. Despite this retraction, nevertheless, the BC/Yukon region made a subsequent internal complaint on this issue.

[828] On May 30, 2014, Ms. Roy advised the BC/Yukon Regional Executive (Exhibit 2, tab 119) that its complaint had been summarily dismissed on the basis that it was frivolous and without merit and set out the reasons behind that decision. She stated that it was the prerogative of the EC and BOD to engage in the affairs of any of its subordinate constituent bodies. She further stated that decisions to provide guidance, mentoring, and oversight had been made in the past.

[829] The issue of whether Mr. Skinner had the legal authority to make a claim on behalf of the region was not raised before me. Therefore I need not consider it.

[830] In paragraph 13 of Part 4 of his complaint, Mr. Skinner alleged that PIPSC refused to provide him with legal representation despite the fact that he was a director and as such was exposed to "more potential conflict." Aside from being a decision with which he disagreed, there was no evidence on this issue concerning any alleged violation of the *FPSLRA*. There was no allegation that other parties to the complaints were provided with counsel or that PIPSC's decision to refuse to pay his legal costs was disciplinary and applied in a discriminatory manner, nor that it was tainted by any improper motive.

[831] In paragraph 14 of Part 4 of his complaint, Mr. Skinner alleged that the documentation related to the internal complaints and his counter-complaints was not translated for the benefit of Mr. Brodeur and that instead, "He just did what Shannon and Debi told him to do and disciplined me." No evidence was offered to prove that Mr. Brodeur did not understand the issues at hand. Further, I am unable to find any violation of the unfair-labour-practice provisions of the *FPSLRA*.

[832] Paragraph 15 of Part 4 of the complaint alleged that PIPSC violated the *Canada Not-for-profit Corporations Act* and the *Dispute Resolution and Discipline Policy* by not

having the matter addressed by a special meeting or a Panel of Peers. He made this allegation throughout the process, and I was provided with substantial related documentation.

[833] On May 5, 2014, Mr. Lazzara and Mr. Tait, on behalf of Mr. Skinner, wrote to Ms. Roy (Exhibit 1, tab 6) about the Denton and Mertler complaints, to advise her that in their opinion, PIPSC was in violation of either the *Canada Not-for-profit Corporations Act* or the Ontario *Not-for-Profit Corporations Act* (S.O. 2010, c. 15). They contended that the actions ordered by the EC could not apply to directors, given the provisions of the legislation. They also alleged that Mr. Skinner had been disciplined under the 2009 *Dispute Resolution and Discipline Policy*, which did not comply with the legislative provisions. They further alleged that the restrictions on his activities imposed by the EC amounted to dismissal from office, which could be done only through a special meeting of those who had elected him in the first place.

[834] Ms. Roy responded the following day (Exhibit 2, tab 63), advising that the Institute had filed its continuance as a not-for-profit corporation in 2013 under the federal legislation and confirming that under it, directors could be removed by ordinary resolution at a special meeting of the members. She then stated that Mr. Skinner had not been removed from office. She then addressed the issue of which *Dispute Resolution and Discipline Policy* applied and stated that the new 2014 policy would not be applied retroactively.

[835] On May 8, 2014, the complainant wrote to the BOD (Exhibit 1, tab 9), raising this issue and alleging that his ability to represent his members and perform his duties was so restricted that it amounted to his removal from office before his appeal had even been heard or a special meeting had been called, as required by law. He stated that he would not quit his director position and that he would leave it only if he were removed by a special meeting of the BC/Yukon region.

[836] In a letter dated May 30, 2014, and addressed to the BC/Yukon Regional Executive (Exhibit 2, tab 119), Ms. Roy, among other things, set out the reasons for the decision to restrict Mr. Skinner's travel and hospitality and to limit his participation in Institute activities to meetings of the BOD, BC/Yukon Regional Executive, and Regional Council. She said that the EC "took great care to arrive at a decision that would seek to

correct the issues raised … without preventing the Regional Director from carrying out his duties as a director."

[837] On August 12, 2014, Mr. Skinner wrote to the BOD and stated that in accordance with federal legislation, only the members of the B.C./Yukon region could remove him from office. He alleged that the freezing of his hospitality account was "… in effect constructive removal of a director."

[838] The documentation indicates that Mr. Skinner's allegations as to the violation of legislation (leaving aside whether they are legally correct) hinge on his contention that he was removed as a director, which in fact was not the case. As Ms. Roy advised him, the measures put in place had been carefully crafted to ensure that he could continue in his position.

[839] Further, while constructive dismissal is a concept in labour law, it does not apply to every employee in all circumstances. Its application to public-sector employees is in question, as has been noted in previous Board decisions. Furthermore, Mr. Skinner has not convinced me that I have jurisdiction to interpret the *Canada Not-for-profit Corporations Act* in this case. Lastly, there is no evidence of discipline having been imposed in a discriminatory manner with respect to this issue that constitutes a violation of the *FPSLRA*.

[840] In the last paragraph of the section of the complaint titled, "Procedural Unfairness, Bias and Denial of Natural Justice during the Investigation", Mr. Skinner alleged that PIPSC applied its discipline policy "retroactively", since the complaints were made in 2013 but were investigated in 2014, which is also when the discipline was applied. He also referred to a "letter dated May 5th". With respect to the May letter, there is an exhibit (Exhibit 1, tab 6) that contains a letter of May 5, 2014, which Mr. Tait and Mr. Lazzara wrote to Ms. Roy, largely about their concerns under the *Canada Not-for-profit Corporations Act*. However, in the second paragraph, they wrote: "For greater clarity, while the new Discipline Policy is in compliance with the Act, the old Policy is not," and argued that "the new Act applies." During the hearing, the complainant withdrew the allegation in his complaint concerning the retroactive application of the Institute's policy. Accordingly, I need not deal with it.

[841] The third subheading in Part 4 of the complaint is titled, “Discipline was imposed by EC while I was appealing their Decision”, although its content, like that of the other sections with subheadings, is broader than is indicated by its title.

[842] Paragraph 17 of that section contains a mix of factual allegations resulting in an accusation by Mr. Skinner that two different standards existed within PIPSC. He alleged that at a BOD meeting, Ms. Bittman loudly told Mr. Dickson in a joking manner to “shut the f*** up”. He alleged that it was intentionally mocking and evidence of “two sets of standards.”

[843] I set out these facts earlier in this decision. A neutral third party was retained by PIPSC who concluded that the complaint should be summarily dismissed, given that the one-time comment at the root of it was not directed at Mr. Skinner and therefore was not intended to belittle or humiliate him and that Ms. Bittman’s apology to the BOD was sufficient.

[844] The mere fact that the same disciplinary penalty imposed on Mr. Skinner was not imposed on Ms. Bittman does not constitute proof of discriminatory treatment. I have no reason to doubt the professionalism of the neutral third party and note that unlike Mr. Skinner, Ms. Bittman had apologized for her comment. The facts in issue in the incident involving Ms. Bittman differ from those in Mr. Skinner’s case.

[845] In paragraph 18 of Part 4 of his complaint, Mr. Skinner returned to the issue of PIPSC’s refusal to stay the disciplinary measures it had imposed while he exercised his right to appeal. The complainant objected to having been ordered to send letters of apology despite the fact that no finding of harassment had been made and stated that his ability to represent his members had been significantly impaired by the freezing of his hospitality account and the restrictions on his attendance at meetings. He also alleged that the requirement to take a sensitivity course was in fact psychological counselling and that PIPSC required a report on the training. Finally, he alleged that the counselling was an invasion of privacy and that his punishment was unprecedented and unreasonable. I have dealt with the impact of the complainant’s right to appeal and PIPSC’s failure to automatically stay the imposition of discipline, the freezing of his hospitality account, and the restrictions on his attendance at meetings. Finally, I have also found that there was no requirement for a psychological report to be remitted to PIPSC.

[846] In paragraph 18 of the complaint, Mr. Skinner alleged that the punishment imposed on him was "completely out of line" with any previous punishment imposed on other directors.

[847] The complaint alludes to the fact that the complainant considered overly harsh the corrective measures imposed by the EC. In his email to the BOD dated May 8, 2014 (Exhibit 1, tab 9), he referred to the cases of other union officials who had been found guilty of harassment but whose only penalty had been the imposition of letters of apology, and even then, only once their appeals had been heard. It comes as no surprise that the individuals he named, with two exceptions, were some of those who figure in this complaint on the side opposing him.

[848] Ms. Bittman responded in an email the following day (Exhibit 1, tab 15). Much of the email contains a response refuting Mr. Skinner's version of the facts in the cases of the union officials who had been found guilty of harassing conduct.

[849] Either Mr. Skinner or his representatives raised this issue more than once in the documentation for his appeal, which was referred to earlier in this decision. As well, a document dated August 11, 2014, and entitled, "Record of PIPSC Disciplinary Decisions" (Exhibit 2, tab 82), is a chart setting out decisions going back to the 1990s and listing each member's classification, type of misconduct, and penalty. The disciplinary measures, excluding the reference to Mr. Skinner, mostly concern suspensions from membership, but there are also indications of expulsions, written reprimands, prohibitions from attending PIPSC functions and activities or seeking elected office, written apologies, and revocations of stewardships. In one other case, subsequent to that of Mr. Skinner, harassment training was imposed.

[850] In paragraph 19 of Part 4 of the complaint, the complainant alleged that he was found guilty of retaliation for having barred one of the internal complainants (Ms. Denton) from the hospitality suite and for having unknowingly breached confidentiality rules by sharing that the internal complaint had been made with members of the BC/Yukon Regional Executive, to obtain witness statements.

[851] As set out earlier in this decision, Mr. Skinner had been advised by PIPSC at the outset of the internal complaint process that he was expected to carry on as usual and to act respectfully in relation to those who had made the complaints. I find nothing discriminatory in PIPSC's conclusion that he had breached this warning by publicly

announcing the barring of a member from the hospitality suite because she had made an internal complaint against him.

[852] The final subheading in the complaint is titled, "Defacto [*sic*] Dismissal". In the first paragraph, Mr. Skinner reiterates earlier allegations of a violation of the *Canada Not-for-profit Corporations Act* and the failure to remove him via a special meeting. I have already dealt with this issue.

[853] In paragraph 22 of the complaint, Mr. Skinner referred to two disparate issues. First, he alleged that he had been prevented from attending a CLC meeting and the May BOD meeting and that he had not been included in the BOD photograph. These situations resulted from the imposition of discipline and PIPSC's refusal to stay it, which I have already dealt with.

[854] The second issue outlined in this paragraph deals with what Mr. Skinner refers to as "concurrent discipline" in that he had to file his appeal of the first two investigation reports in 14 days rather than being granted 14 days in which to appeal each of them. He raised this issue in his email to the BOD dated May 8, 2014 (Exhibit 1, tab 9), stating that as a result, he had been unable to attend the CLC meeting as well as the May BOD meeting, as all his time had been taken up by the complaints. The evidence disclosed that when Mr. Skinner requested an extension, it was granted.

[855] Ms. Noonan dealt with this issue in her report, pointing out that there was no indication that Mr. Skinner had not been able to meet the deadlines or that his replies had been cut short. He was granted a 2-week extension in one case and never requested any extensions for his appeal of the 2 other complaint findings. Ms. Noonan commented on this aspect in paragraph 5 of her decision on the appeals related to the Mertler and Denton complaints (Exhibit 2, tab 83). She stated that the 14 days he was given to respond was not a violation of the *Dispute Resolution and Discipline Policy*; he was permitted a response longer than the anticipated 5 pages. She added, "There is also nothing in the appeal submission that suggests more needed to be said; the submission is articulate and the points therein made clearly."

[856] At paragraph 23 of Part 4 of the complaint, the complainant returned to the issue of having an observer present at meetings he attended. He set out the meetings that he was prevented from attending and stated that he was prevented from carrying out his duties, that some of his work was negated, and that he was humiliated. Lastly,

he complained that the observer had to be Mr. Hindle, when other PIPSC officials attended meetings and could have acted as observers. This paragraph adds nothing new to the complainant's earlier allegations on this issue, which I have already dealt with.

[857] In paragraph 24 of Part 4 of the complaint, the complainant refers to not having been able to attend an AFS subgroup meeting at which the CRA's regional assistant commissioner would be present, thus humiliating him in the eyes of his employer and treating him like "a common criminal". I find this incident but another example of the outcome of the disciplinary process. As with the incidents described earlier, I find that this allegation does not constitute a violation of the unfair-labour-practice provisions of the *FPSLRA*.

[858] Paragraph 25 of Part 4 of the complaint describes Mr. Hindle's attendance at meetings in the region and his meetings with members and alleges that he voiced personal opinions about the complainant and subsequently filed "a discriminating report", which caused Mr. Skinner to make another internal complaint.

[859] The complainant also alleged that Mr. Hindle engaged in retaliation against him. On September 10, 2014, nine days before he made the present complaint, Mr. Skinner made a harassment complaint through the internal process at PIPSC against Mr. Hindle (Exhibit 1, tab 11), alleging that he had been slandered and libelled by him in June 2014, further to Mr. Hindle's attendance at the BC/Yukon Regional Executive meeting.

[860] According to Mr. Skinner, the report filed by Mr. Hindle further to his attendance at the meeting was libellous, and the comments made to members of the regional council about Mr. Hindle's personal opinions of Mr. Skinner following the meeting were slanderous. With respect to the comments that allegedly were made, Mr. Skinner accused Mr. Hindle of calling him a hypocrite and stating that he was controlling and dictatorial. As for the report that Mr. Hindle drafted, the complainant alleged that it likely affected his re-election chances.

[861] On September 13, 2014, Mr. Hindle and Mr. Burns made a complaint against Mr. Skinner, which was hand-delivered to him on that day. On September 19, 2014, Mr. Skinner made a complaint against them (Exhibit 2, tab 123), alleging that their complaint was retaliation for his initial complaint against Mr. Hindle.

[862] In an email dated June 16, 2014 (Exhibit 20), one of the complainant's representatives at the time, Mr. Tait, wrote to Ms. Roy about this issue, among others, and alleged that Mr. Hindle had had a private breakfast meeting with Ms. Denton while he was there. The email also qualified Mr. Hindle's statements to BC/Yukon members as arbitrary, personal, unfounded, and inaccurate.

[863] Attached to the complaint made against Mr. Hindle was a copy of his report, which he shared with the BOD and BC/Yukon Regional Executive. In it, Mr. Hindle stated that on a few occasions during the meeting, "it was clear that the Regional Director was running the meeting." Mr. Skinner characterized this as libellous.

[864] Mr. Skinner similarly characterized a passage from the report in which Mr. Hindle stated as follows about the BC/Yukon Regional Executive meeting:

> …
>
> … [The meeting] *had no established standard of strictly adhering to their Constitution and By-Laws or being guided by past practice or procedure. As a result, there was no certainty about what was guiding the bulk of their decision making as it seemed to be informed by various sources although it was clear to me that the main process used was whichever one was suggested by the Regional Director.*
>
> …

[865] On the same day that Mr. Skinner made his complaint against Mr. Hindle, the latter, together with Mr. Burns, wrote to Ms. Roy about their concerns with the June Regional Council meeting of the BC/Yukon region. The letter stated that Mr. Skinner's director's report "appeared to have contained information related to matters which should be confidential", thus breaching the Institute's by-laws and policies. The letter alleged that several members had expressed concerns about this but did not wish to make a formal complaint. Mr. Skinner was advised of the existence of this complaint by a letter from Ms. Roy dated September 25, 2014 (Exhibit 1, tab 11).

[866] As referred to earlier in this decision, the issue of Mr. Hindle's alleged retaliation was outlined by Mr. Tait in his letter to Ms. Roy dated September 23, 2014 (Exhibit 2, tab 92). It is also referred to in Mr. Skinner's letter of September 19, 2014, to Ms. Roy (Exhibit 2, tab 94), which he identified as a harassment complaint against Mr. Hindle and Mr. Burns. Mr. Skinner complained that Mr. Hindle hand-delivered his complaint to him during a meeting of the BC/Yukon Regional Executive, which was

clearly retaliation for him having filed a complaint against Mr. Hindle. He then outlined a series of grievances against Mr. Hindle and Mr. Burns and alleged that PIPSC had permitted members' money to be abused by sending Mr. Hindle to the Vancouver meeting. Mr. Skinner ended by expressing his opposition to being barred from attending the stewards' meeting, advising PIPSC that his complaint with the Board is public, and warning that it would tarnish the Institute's image.

[867] Mr. Skinner's complaint against Mr. Hindle and Mr. Hindle's counter-complaint were closed by the Institute in January of 2016 (Exhibit 25), given that Mr. Skinner had retired from the CRA and no longer held any PIPSC office or sat on any BOD committees.

[868] Although Mr. Skinner alleged that he took issue with what Mr. Hindle had said to delegates during his so-called private meetings with them, he never made or proved any specific allegation or impropriety in that respect.

[869] I have already ruled on the issue of PIPSC's right to have an observer attend meetings at which Mr. Skinner would be present. With respect to any private meetings that Mr. Hindle held with members, I am unable to find that they were anything but private meetings between a vice-president and members and that any directing force of PIPSC was behind them. As for the report filed by Mr. Hindle, Mr. Skinner did not submit any evidence proving that its content was discriminatory or in violation of the *FPSLRA*. Mr. Skinner's complaint against that report is in effect an allegation of slander and libel, which is not within the purview of the Board and does not constitute a violation of the *FPSLRA*.

[870] As stated earlier in this decision, in paragraph 26 of Part 4 of his complaint, Mr. Skinner complained that Mr. Hindle hand-delivered a complaint to him at the BC/Yukon Regional Executive meeting in September 2014. He alleged that this act was retaliation for him having made a complaint against Mr. Hindle three days earlier. First, Mr. Hindle's complaint was about issues that concerned him and Mr. Skinner, and I can find nothing to suggest that PIPSC directed making the internal complaint or that it was involved in making it. Second, I am unable to find any violation of the *FPSLRA* in this incident.

[871] In paragraph 27 of Part 4 of the complaint, the complainant continued with this incident but focused on Mr. Burns' involvement in the making of the internal

complaint, which was jointly signed by him and Mr. Hindle. Mr. Skinner alleged that the two colluded to intimidate, retaliate against, and harass him because of the complaint he had made against Mr. Hindle and because he had not allowed them to speak at the Regional Council meeting. In paragraph 28 of the complaint, Mr. Skinner pointed to the fact that the letter to him about this internal complaint was written on letterhead from the president's office and stated that it violated PIPSC's *Harassment Policy* in that it constituted retaliation. Not one iota of evidence of collusion was offered during the hearing. The complainant did not convince me that the factual allegations, even if true, were about violations of the application of PIPSC's standards of discipline that therefore constituted violations of s. 188(c) of the *FPSLRA*. Further, I note that the complainant did not state that that the alleged intimidation, retaliation and harassment was in any way connected to the exercise of his rights under the *FPSLRA*, as required by ss. 188(d) or (e). Rather, he put forward that those behaviours were linked to the internal complaints which he had made and to the events at the Regional Council meeting – matters over which I have no jurisdiction.

[872] In the final paragraph of the complaint, paragraph 29, Mr. Skinner referred to not having been permitted to attend a meeting of the Stewards Council, which any steward could have attended, despite the fact that his stewardship had not been suspended. He also claimed that this was in violation of the *Canada Not-for-profit Corporations Act*.

[873] The restrictions imposed on Mr. Skinner by the Institute were crafted in a manner to allow him to carry out his director duties, and I have already ruled that the restrictions did not constitute an unfair labour practice under the *FPSLRA*. He did not demonstrate that the issue concerning the Stewards Council constituted a violation of the unfair-labour-practice provisions of the *FPSLRA*. I have already stated that he has not persuaded me that I have jurisdiction to interpret the *Canada Not-for-profit Corporations Act*. My jurisdiction flows from the *FPSLRA*. In my view, that allegation does not violate its unfair-labour-practice provisions.

[874] Having considered all the circumstances of this complaint, I conclude that the complainant failed to raise any grounds that would support a finding of an unfair labour practice within the meaning of s. 188(c) of the *FPSLRA*. Accordingly, for the reasons set out in this decision, the complaint is dismissed.

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

(The Order appears on the next page)

VIII. Order

[876] The complaint is dismissed.

February 24, 2021.

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