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



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

BETWEEN

ATOUSA POURFARD

Grievor

and

**DEPUTY HEAD
(Department of National Defence)**

Respondent

Indexed as

Pourfard v. Deputy Head (Department of National Defence)

In the matter of an individual grievance referred to adjudication

Before: Adrian Bieniasiewicz, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Grievor: Herself

For the Respondent: Virginie Gagnon-Dubreuil, counsel

Heard via videoconference,
July 22 to 25, 2025.
(FPSLREB Translation)

REASONS FOR DECISION**(FPSLREB TRANSLATION)**

I. Overview

[1] Atousa Pourfard (“the grievor”) challenges her rejection on probation under the *Public Service Employment Act* (S.C. 2003, c. 22, ss. 12, 13; *PSEA*). Specifically, she alleges that her termination was unfair and that the Department of National Defence (“the respondent”) did not take into account the situation of discrimination, harassment, and bullying she was facing.

[2] The grievor was a trainee in the Officer Development Program when her employment was terminated. Her position was classified at the TI-04 group and level.

[3] The respondent objected to the jurisdiction of the Federal Public Sector Labour Relations and Employment Board (“the Board”) to hear this grievance on the basis that the termination of employment occurred during the grievor’s probation for a legitimate employment-related reason. Specifically, s. 211 of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; “the Act”) does not allow the Board to hear a grievance about a termination of employment under the *PSEA*. I agree.

[4] For the following reasons, I deny the grievance for lack of jurisdiction.

II. Preliminary issues**A. The bargaining agent withdrew its representation**

[5] The grievor referred the grievance challenging her rejection on probation under ss. 209(1)(a) and (b) of the *Act*. Section 209(1)(a) allows federal employees to refer an individual grievance to adjudication if it relates to the interpretation or application of a provision of a collective agreement or an arbitral award as long as it is supported by the bargaining agent (see s. 209(2) of the *Act*).

[6] Section 209(1)(b) of the *Act* allows a grievance related to a disciplinary action resulting in termination, demotion, suspension or financial penalty to be referred to adjudication, even without support from the bargaining agent.

[7] Considering that the bargaining agent had informed the Board that it was ceasing to represent the grievor, the Board closed the file numbered 566-02-49282 with respect to the referral to arbitration of the grievance under s. 209(1)(a) of the *Act*.

B. The Board refused to admit the surreptitious audio recordings into evidence

[8] The grievor wanted to introduce into evidence audio recordings she made without the knowledge of Mario DeBlois, her former manager, who has been retired since December 2020, and Stéphane Carrier, her mentor. According to the grievor, the audio recording of Mr. DeBlois establishes that the work environment was toxic. As for the audio recordings of Mr. Carrier, she submits that they demonstrate that she was a victim of harassment and discrimination due to her religion.

[9] The respondent requested that the Board not admit these audio recordings into evidence for the following reasons. First of all, it submitted that Mr. DeBlois had been recorded without his knowledge after the grievor was terminated. Furthermore, he was not called as a witness to verify the accuracy of his statements and to place them in context. As for the audio recordings of Mr. Carrier, although he came to testify before the Board, the grievor did not cross-examine Mr. Carrier on the content of these recordings to establish that they are reliable and accurate, and to put them in context. According to the respondent, surreptitious recordings should not be encouraged.

[10] In support of its objection, the respondent referred me to Board case law that discusses the admissibility of surreptitiously recorded evidence (see *Baun v. Statistical Survey Operations*, 2014 PSLRB 26 at paras. 114 to 116; *Horac v. Public Service Alliance of Canada*, 2023 FPSLREB 1 at paras. 15 and 16; *Tuquabo v. Canada Revenue Agency*, 2006 PSLRB 128 at para. 4; *Regy v. Deputy Minister of Public Works and Government Services*, 2021 FPSLREB 17 at paras. 22 to 25). I will discuss this later in my reasons.

[11] The grievor asked the Board to dismiss the respondent's objection and to admit the audio recordings. In support of her request, she referred me to two articles published on law firm websites. The first is titled *Les paroles s'envolent, les enregistrements restent : l'admissibilité en preuve d'un enregistrement audio ou vidéo* (Words fly away, recordings remain: the admissibility of an audio or video recording as evidence), and the second *Enregistrer une conversation à l'insu au Québec: ce que prévoit la loi* (Recording a conversation without knowledge in Quebec: what the law provides). I reviewed them in my decision.

[12] In order not to unduly delay the proceedings, I admitted these recordings subject to conditions. However, after hearing the parties' arguments and examining the

applicable law on this issue, I have decided that these recordings should not be admitted into evidence for the following reasons.

[13] I listened to the recordings in question. In summary, the audio recording of Mr. DeBlois addresses the grievor's complaints about her work environment and her rejection on probation. Mr. DeBlois briefly mentions that the work could be demanding and that the work environment was toxic. Mr. DeBlois did not testify before the Board.

[14] As for the audio recordings of Mr. Carrier, the main discussions revolve around a training document in which the grievor transcribed the Ten Commandments and a follow-up email related to this document. They also focus on the revision of procedures in both official languages and on feedback related to the grievor's performance.

[15] Specifically, in these recordings, Mr. Carrier explains to the grievor why religious expressions are not appropriate in a working document in the field of quality assurance. In addition, he comments on the grievor's progress in relation to her learning and briefly discusses the areas where she needs to improve. Mr. Carrier testified before the Board.

[16] I agree with the respondent that surreptitious audio recordings should not be encouraged. There is no dispute that the Board has the power to accept evidence, whether admissible in a court of law or not (see s. 20(e) of the *Federal Public Sector Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365)). It can therefore, in principle, accept such recordings. However, in general, it refuses to do so.

[17] I concur with the Board's case law that audio recordings made in the workplace without the knowledge of the individuals concerned should only be admitted as evidence in exceptional circumstances (see *Baun*, at para. 116; *Horac*, at para. 16; *Tuquabo*, at para. 4; and *Regy*, at paras. 22 to 25).

[18] I believe there are good reasons in principle to discourage surreptitious audio or video recordings made in the workplace in the absence of exceptional circumstances. Allow me to explain. Allowing parties to submit surreptitious audio recordings as evidence would encourage a culture of distrust in the workplace. It is difficult to imagine how such a climate of distrust could contribute to maintaining good working

relationships and, more specifically, to resolving disputes. In practical terms, I find it hard to see how a manager or an employee could have an open and honest discussion knowing that they might be recorded without their knowledge and that, later on, these recordings could be used as evidence against them.

[19] In short, allowing parties to adduce into evidence audio recordings made without the other party's knowledge in the absence of exceptional circumstances would encourage a practice that could harm conflict resolution and the overall work environment.

[20] I would also like to add that if the grievor wanted to establish with Mr. DeBlois that the work environment was toxic, she could have called him as a witness. The audio recording does not allow me to understand why Mr. DeBlois described the work environment as toxic. What was he referring to? Was there a connection between this work environment and the grievor's rejection on probation? In short, this audio recording raises more questions than it provides answers.

[21] With respect to the audio recordings of Mr. Carrier, he testified before the Board about the working document that is the subject of the audio recordings and explained why, in his opinion, these religious expressions did not belong in the training document prepared by the grievor. This document was also admitted into evidence. The follow-up email related to this document and pertaining to one of the audio recordings has also been admitted into evidence. I note that, before the Board, the grievor did not ask Mr. Carrier any questions related to this email, which she could have done. The grievor also did not ask Mr. Carrier to clarify how it could be useful for her to review the procedures in English, as Mr. Carrier had stated in one of the audio recordings. Lastly, the issue of the grievor's learning and performance difficulties noted by Mr. Carrier was the subject of testimonies before the Board.

[22] In short, the recordings of Mr. Carrier add nothing relevant to the testimonies that were given before the Board.

[23] With respect to the two publications submitted by the grievor concerning the admissibility of audio recordings made without the speaker's knowledge, they are of little use. They discuss case law in Quebec civil law and criminal law, which do not apply in the context of labour relations in the federal public sector. In addition, the opinions expressed in these publications do not specifically address audio recordings

made without the other party's knowledge in a workplace setting where the parties are generally expected to collaborate and work together. I also note that the grievor did not establish that there were exceptional circumstances that would justify admitting these recordings into evidence.

[24] For these reasons, I refuse to admit into evidence the audio recordings made without Mr. DeBlois's or Mr. Carrier's knowledge.

III. Summary of the relevant evidence

[25] The grievor testified on her own behalf. She did not call any witnesses. As for the respondent, it called the following five witnesses:

- Gaétan Moreau, Commander of Regional Operations Quebec;
- Rowan Sewell, Director, Materiel Group Management Coordination;
- Josette Buteau, Quality Assurance Representative (QAR) and acting Quality Assurance Manager (QAM), at all relevant times;
- Guy Sirois, acting QAR and QAM, at all relevant times;
- Mr. Carrier, QAR, at all relevant times.

A. The grievor was hired as a trainee in the Officer Development Program (ODP or "the program")

[26] The grievor started her job with the respondent on October 3, 2019, as a trainee in the ODP. Her position was classified at the TI-03 group and level. The grievor was appointed for an indeterminate period and was on probation for the duration of the apprenticeship program or 12 months, whichever was longer.

[27] The ODP includes five career streams: Procurement/Purchasing and Supply (PG), Engineering (EN-ENG), Engineering and Scientific Support (EG), Electronics (EL) or Technical Inspector (Quality Assurance Representative) (TI). Each career stream has its own requirements for education and language skills. The grievor was in the Technical Inspector (TI) stream.

[28] The objective of the ODP's TI career stream is to provide trainees with the necessary skills, knowledge and work experience to provide quality assurance (QA) functions to support the Materiel Acquisition and Support process within the Directorate of Quality Assurance (DQA) of the Materiel Group.

[29] The TI career stream consists of two phases. The first one is at level TI-03. There is a lot of reading. It is mostly theory. Trainees must familiarize themselves with the organization and the quality assurance work procedures or methods, as explained in the training program manual.

[30] During phase I, the trainees have discussions with a QAR and accompany them to become familiar with the work. Phase I trainees, however, do not go to companies. They do not intervene with contractors. This phase takes place mainly in the office.

[31] If a trainee passes phase I, they move on to phase II and will be promoted to level TI-04. This phase includes practical exercises. It is essentially about applying the theory learned during phase I to practical issues. Trainees are expected to complete specific tasks. They get into the details. It is during this phase that the respondent assesses whether trainees have learned the material well. However, trainees are not yet called to intervene independently with contractors. They remain under the supervision of QARs.

[32] At the end of phase II, trainees must be proficient in and able to apply the following nine procedures:

- Procedure 4.2 – Risk Identification
- Procedure 4.3 – Risk Analysis
- Procedure 4.4 – Large-Scale Facility Monitoring Plan
- Procedure 4.5 – Quality Assurance Monitoring and Reporting
- Procedure 4.6 – Delegation of Official Quality Assurance Services to External Parties
- Procedure 4.7 – Delegation of Quality Assurance Services to Internal Parties
- Procedure 4.8 – Observations on QA Done for Suppliers
- Procedure 4.9 – Disposal of Materiel
- Procedure 4.10 – Quality Performance

[33] If trainees successfully complete this second and final phase of the ODP, they will receive their diploma and be onboarded into the regular staff. They will be promoted to the position classified at the TI-05 group and level.

[34] Trainees are regularly assessed using standardized assessments to track their progress and provide any necessary support to help them succeed in the ODP. A given assessment can focus on a particular procedure or on a set of procedures.

B. Grievor's performance - Phase I

[35] According to Mr. Moreau, the grievor's training in phase I seemed to be going well, despite a few shortcomings. Patience was needed with the grievor, and sometimes, certain things had to be repeated to her. He repeated to her a few times that she was in training and that she needed to focus on the program.

[36] According to the grievor's assessments in phase I admitted into evidence, in summary, the grievor experienced some difficulties with comprehension and oral expression in French. She also had a tendency to see things too broadly. The trainers noted that the grievor sometimes had difficulty focusing on the risks identified in various instruments. According to them, the grievor was not always receptive to feedback from her peers and instructors and did not always understand her role and responsibilities as a QAR.

[37] Despite these few difficulties, Mr. Moreau agreed to move the grievor to phase II. He did not want to penalize her financially by keeping her in phase I. The appointment to the TI-04 position comes with a salary increase. As a result, the grievor moved to phase II and was promoted to the IT-04 position, effective October 5, 2020. The offer letter specified that the grievor would remain on probation until it was completed (i.e., until she completed the ODP).

C. Grievor's performance - Phase II

[38] The evidence shows that the grievor had significant shortcomings and difficulties when it came to applying the theoretical concepts to practical issues during this second phase of the ODP. The grievor was not very receptive to the trainers' advice and recommendations. Despite the action plan put in place, the grievor was unable to complete the ODP.

[39] The respondent submitted assessment reports detailing the issues noted with the grievor.

[40] The first report assessing the grievor's knowledge in Phase II was prepared by Éric Tremblay, Mr. Sirois, and Ms. Buteau for the period from October 3, 2020, to May 14, 2021. The report reveals that the grievor's skills were significantly lacking. More specifically, out of 25 assessed competencies, the grievor received a rating of "I-2" (meaning improvement required - poor) for 12 competencies. For written

communication, she received the rating “I-2”. I note that for all the competencies for which the grievor received the rating “I-2,” the assessors provided her with feedback to help her understand why these competencies were not successfully met and how to improve.

[41] The assessors recommended that the grievor continue practical learning and follow the advice and guidance of experienced quality assurance instructors to achieve greater efficiency and autonomy in her work and move up to level TI-05.

[42] The second global knowledge assessment report for the period from May 15 to August 26, 2021, was prepared by Mr. Sirois and Ms. Buteau. This report reveals that the grievor’s performance had deteriorated since the previous period. Specifically, for all the assessed competencies, except for the competency “Defend and promote diversity and bilingualism” for which she received a rating of “A” (meaning achieved), she received a rating of “I” (meaning improvement required). For the parts of the assessment related to job-specific knowledge, organizational knowledge, and communication, the grievor received, without exception, the rating “I”.

[43] For each of the assessed elements, the assessors provided comments, often accompanied by recommendations, to help the grievor understand the areas where she was experiencing difficulties and what she could do to improve.

[44] In the general comments, the assessors noted that, despite the numerous meetings and follow-ups with the grievor, her work had not improved. On the contrary, it had deteriorated. According to the assessors, the grievor had not achieved the necessary autonomy to perform the QAR tasks in phase II and had not demonstrated that she had the ability to carry out the complete cycle of activities described in procedures 4.2 to 4.10.

[45] In addition to these two overall assessments, there were other more individual and targeted assessments for certain procedures.

[46] The assessment prepared by Mr. Sirois and Mr. Tremblay for the period from February 19 to March 4, 2021, focused solely on the activities related to procedures 4.1 to 4.4. In relation to the aspects to improve, the assessors noted that some risks in the monitoring plan identified by the grievor were redundant and irrelevant. The grievor had difficulty identifying the key points (quality, risks) during

the review of a contract, had failed to indicate certain required items or had provided too many items. They advised the grievor to ensure she fully understood the relevant issues before undertaking a task. They suggested that she ask questions as needed.

[47] Mr. Sirois and Mr. Tremblay prepared another individual assessment for the period of March 4 to March 15, 2021. Once again, it dealt with the activities related only to procedures 4.1 to 4.4. The assessors noted that the grievor had difficulty focusing on essential elements when performing her work, she emphasized items that were not relevant to quality assurance and her analysis was not comprehensive. Her oral communication was not always clear. The grievor did not seem receptive to the comments.

[48] Another individual assessment was prepared, this time by Mr. Tremblay and QAR Michel Marcil for the period of March 24 to May 26, 2021. According to the report, for the section on knowledge of the quality program, procurement policy and the management system at the DQA of the Department of National Defence (procedures 4.2 to 4.10), the grievor received the “I-2” rating.

[49] According to the assessors, the grievor showed that she lacked product knowledge, had difficulty interpreting requirements and was inflexible about this. She still needed to observe how to assess and reach an objective conclusion on the result of an audit. Assessors recommended that the grievor ensure that she properly understood the instructions she received and incorporate them into her work while showing flexibility. She also had to make sure her findings were precise and relevant.

[50] Ms. Buteau met with the grievor about this assessment. She told her that the entire exercise had been assessed as unsatisfactory. While the grievor did not agree with some of the trainers’ comments, she agreed with the recommendations that were made. However, Ms. Buteau noted that the grievor took no responsibility for the issues noted in her work, stating that the problem was with management and that management had to find solutions.

[51] Mr. Moreau testified that the trainers had told him that the grievor did not always do what was asked of her. They also told him that the grievor had difficulty accepting their advice and guidance. When the instructors asked the grievor for reports, they were incomplete or poorly done. When the instructors went to see her to tell her that work had not been well done and to explain why, the grievor was unhappy.

There were disputes. The grievor gave the impression that she was more qualified than the instructors. Mr. Moreau explained to the grievor that the purpose of the criticism was to help her improve.

[52] Mr. Moreau also testified that the grievor had difficulty with written communication. What she was writing was not clear, so people would come back to see her. She was not happy about it, and it was causing arguments.

[53] Mr. Moreau organized two meetings with the grievor to clarify and understand the comments she had recorded in her self-assessment, as there seemed to be a discrepancy with the trainers' observations. He also wanted to talk with the grievor about her overall performance. Ms. Buteau, a union representative and a labour relations advisor were present at the meetings.

[54] During these meetings, Ms. Buteau informed the grievor of the problems and shortcomings identified in her work during phase II and the need for her to improve. According to Mr. Moreau, the grievor refused to acknowledge that she had problems. She blamed others to explain the shortcomings that were cited. Mr. Moreau testified that the managers and trainers had told him that the grievor was not willing to accept help.

[55] Mr. Moreau testified that, although the grievor had been in the ODP for almost two years at the time these meetings took place, the grievor's work still had many shortcomings. Most ODP members were ready to move to level TI-05 after 17 months. The grievor was still not able to work independently.

[56] Ms. Buteau testified that she had conveyed the expectations of the ODP to the grievor several times and had clarified them. Even though the training took place during COVID, the grievor was still able to visit businesses and go to the office to access work tools and continue her training. According to Ms. Buteau, the grievor was not doing what she was told, was not following advice, and was not always implementing the suggestions that were given to her.

[57] According to Ms. Buteau, the grievor did not always implement the suggestions and comments from the instructors. The grievor was resistant to the requested changes and did not seem to accept feedback well. During work hours, she was taking training sessions that were not authorized or that were not related to her probation.

She was asked to focus on the recommended training that was relevant to the program.

[58] Mr. Sirois testified that relational communications with the grievor were difficult. The grievor did not always understand what was being said to her or what she was being asked to do. According to him, the grievor had difficulty accepting feedback from her peers or trainers in a positive manner. When she was told that she had problems or that she did not understand, she would shut down, get angry or feel criticized. This caused conflicts. It was very difficult to communicate with her. The grievor was not performing at the TI-04 level.

[59] According to Mr. Sirois, the respondent was very open with the grievor. They were flexible with her and gave her the most that they could. When it was not working, they brought in another trainer to see if it could help the situation. They tried to help her complete the ODP.

[60] The grievor testified that she did not agree with the trainers' comments. In her view, she understood the work and worked well. The managers always had negative comments about her, which she did not appreciate. According to the grievor, she had no difficulty identifying the essentials despite the fact that she had not received the appropriate training to learn her job well.

[61] The grievor testified that she always gave her best effort. She did everything possible to improve herself. On the other hand, when she felt that a comment or remark was not justified, she asked for evidence.

[62] During cross-examination, the grievor confirmed that if the ideas and suggestions of others are contrary to her own values and sense of ethics, she refuses to listen to them or defends herself. She continues to apply this philosophy even today. When, in the grievor's opinion, the suggestions or feedback are not based on evidence, she requests that evidence be provided to substantiate them.

[63] The grievor also explained that if the information or advice she receives does not correspond to what she knows or if, in her opinion, there is a gap, she will ask questions and do her own research to validate everything. If in the end she does not agree with the suggestions made, she rejects them. In the event that she believes the information is insufficient or that the opinions of others are not as good as her own,

she listens but ignores them. Lastly, if the opinions of others go against her values and ethics, if they are insulting, unfair, harmful or against her integrity, for example when someone tells her that she [translation] “does not understand”, she refuses to listen to them.

[64] The grievor sees it as a personal attack when she is told that she is having difficulty doing her job. According to her, it is disrespectful to make such statements.

D. Implementing an action plan

[65] Given the performance issues noted with the grievor, management decided to implement an action plan to help her improve and complete the program. To this end, a meeting took place with the grievor on August 26, 2021, to present an action plan and discuss its terms.

[66] Mr. Moreau explained to her that, up to that point, she had not been able to demonstrate that she was capable of performing the required tasks, and therefore, she could not move up to the TI-05 level. He reminded her of the importance of focusing on the tasks assigned to her to ensure her success at the TI-04 level. If she could not demonstrate that she has the expected behaviour and the skills to fulfill all the responsibilities inherent in the TI-04 level, additional action would be taken, which could include termination of employment due to shortcomings during probation.

[67] The action plan began on August 26, 2021. It specified the expectations that the grievor had to meet and the tasks and exercises she needed to complete to improve her performance. The action plan also included performance indicators and focused on the following three areas: 1) Applying knowledge; 2) Working effectively with others; and 3) Thinking things through. Mr. Moreau reviewed the action plan with the grievor and answered her questions. Mr. Moreau wanted her to be given the best chance to pass phase II. The grievor signed the action plan.

[68] In this context, Mr. Carrier and Paris Filippidis were approached by management to act as trainers. Initially, they were supposed to provide the grievor with two weeks of training followed by two simulations spread over two weeks. The two simulations were to focus on the revision of two contracts. I will address this in more detail later in this decision.

[69] Before their first meeting with the grievor, which was scheduled for September 13, 2021, Mr. Carrier sent her an email on September 9, 2021, explaining the purpose of the training. This mainly involved strengthening the foundations of her training so that she could succeed in the program. Mr. Carrier also proposed steps to take and provided her with several important tips for effective training.

[70] The purpose of this first meeting was to assess the grievor's knowledge. Mr. Carrier wanted to identify the shortcomings she had in terms of training so that he could properly determine the learning plan. He made it clear to the grievor that he did not want to know what had happened with the other trainers to ensure that his assessment and the training were not influenced by their comments or impressions. He wanted to [translation] "start from square one to assess her knowledge". He did not want to create confrontation between himself and the grievor.

[71] Mr. Carrier testified that he had a good relationship with the grievor. When they worked in person, she would come to see him in his office to talk. During the pandemic, there was distancing between people, including her. When she found out he was going to be one of the trainers, she wrote him an email to say she was happy.

[72] The results of the preliminary assessment that took place on September 13, 2021, were not as good as hoped. Several gaps were identified in the grievor's knowledge. She had difficulty answering the questions that were asked of her. There were many items with which she was not proficient. Mr. Carrier specified that most of the assessed items should normally be mastered within the first six months of the ODP. He specified that both he and Mr. Filippidis had assessed her separately based on the same criteria and using the same framework. Then, they shared their assessments.

[73] Mr. Carrier discussed it with his manager, Mr. Tremblay. Considering the poor results of the preliminary assessment, he told him that two weeks of training would not be enough. He requested that the training be extended at least until December 31, 2021, to allow the grievor to meet the objectives. Mr. Tremblay approved the request.

[74] Following this preliminary assessment, the trainers provided the grievor with their feedback and training to address the identified gaps. The training continued.

[75] At one point, the grievor prepared a document summarizing procedures 4.2 to 4.10, as requested. She submitted it to Mr. Carrier for discussion. In this document, the grievor had inserted, at the top of each new section, one of the Ten Commandments. For example, the first page dealt with the application of knowledge, and the grievor inserted the commandment “You shall have no other gods before me”. For the first page of the section relevant to quality performance, the grievor inserted the commandment “You shall not make for yourself an idol, nor shall you bow down to these gods”, and so on.

[76] Mr. Carrier told the grievor that it was not appropriate to include religious expressions in a quality assurance work document. In his view, they had no relevance in a document about a summary of quality assurance procedures; they were out of context, and were not related to the procedures, roles or responsibilities of a QA manager. According to Mr. Carrier, they had a long discussion about it.

[77] The grievor did not agree with Mr. Carrier. She indicated to him that these religious expressions were a part of her and, consequently, it was appropriate to reference them in her training document. In her opinion, she had the right to include them in a document about a summary of quality assurance procedures. The grievor even made sure to send an email to Mr. Carrier on October 18, 2021, explaining why, in her opinion, it was entirely appropriate to include the religious expressions in the document she had prepared. She even drew a parallel between the commandments and the quality assurance procedures.

[78] Before the Board, the grievor argued that Mr. Carrier’s explanations to the effect that these religious expressions had no place in the document, were discriminatory on the basis of religion and constituted harassment.

[79] Nonetheless, to help the grievor better understand quality assurance procedures 4.2 to 4.10, the trainers decided to review them with her and do exercises using specific examples. They asked the grievor to read the relevant procedure, to raise any questions she had about the procedure, to summarize it and to be ready to discuss it with them. Although the trainers wanted to proceed this way for each of the procedures, they stopped at procedure 4.4 because the grievor stated that she did not understand why they had to review each of the procedures. She insisted that she understood the procedures in question just as well as they did, if not better.

[80] Given the grievor's reluctance to review each of the procedures, Mr. Carrier contacted his manager to inform him that they would be changing their strategy. Specifically, Mr. Carrier invited the grievor to ask any questions she had about the procedures and that they would discuss them afterward.

[81] According to Mr. Carrier, this new strategy proved to be very laborious. The grievor did not seem to understand either the procedures or the trainers' expectations. They followed up with her a few times to see if she had any questions. She replied that she did not have any. There were always obstacles. The grievor always wanted to do things her way. She was a bit headstrong, according to Mr. Carrier. She provided information that was not requested. She had few questions about the procedures. It was difficult to check whether she understood the procedures. She did not accept that the trainers told her she had [translation] "misunderstood". She resisted when they told her that a procedure needed to be reviewed on the grounds that it was misunderstood.

[82] The proficiency assessment for the procedures in question revealed that the grievor was not able to apply them correctly. They found that after two years of training, the grievor was not even sure if she had the right documents in hand. There were many missing elements and others were not very well understood. Some words used by the grievor were difficult to understand. They found that the grievor did not always adequately understand the ODP.

[83] Mr. Carrier testified that the grievor argued about each item he shared with her. Although Mr. Carrier wanted to draw a line between the training under the action plan and the training that the grievor had received previously, the grievor often raised the disputes she had had with other people in the past. The grievor appeared to misunderstand many things. She confronted him regularly. She questioned what he said. Despite having shared these concerns with the grievor by email on October 28, 2021, stating that she would need to change her behaviour for the training to continue, the grievor disregarded them. Mr. Carrier raised these concerns with his manager, Mr. Tremblay, who informed Mr. Moreau.

[84] On November 5, 2021, Mr. Moreau provided the grievor with the feedback he had received from the trainers about his action plan for the period from September 13 to October 21, 2021. In summary, the trainers stated that the grievor had several

significant gaps in the basic concepts of a QA and discussed the steps they had taken to help the grievor improve. According to them, the grievor's knowledge was not up to the IT-04 level.

[85] Also according to the trainers, the grievor required them to provide several examples to convince her that the information and items they presented to her were valid, which was neither effective nor efficient. They noted that the grievor had difficulty respecting the hierarchical structure and the chain of command; she almost never included her training manager in correspondences despite several reminders. The grievor was reluctant to receive critical and constructive feedback aimed at improving her approach and understanding.

[86] On November 8, 2021, Mr. Moreau and the grievor met to discuss the first performance assessment prepared by the trainers, Mr. Carrier and Mr. Filippidis. During this meeting, Mr. Moreau discussed the feedback he had received with the grievor and expressed his concerns about the issues raised by the trainers. Mr. Moreau informed her that if she did not demonstrate sufficient improvement in her performance to meet the program's requirements, she could be rejected on probation.

[87] To assess the grievor's progress, she was part of a simulation involving the review of a Canadian contract and an American contract approximately every two weeks. According to Mr. Carrier, they were simple and easy-to-read contracts. Each contract was sent to the grievor 24 hours in advance to allow her to review it. She was allowed to take notes and bring them to the simulation period. This took place with both Mr. Tremblay and Mr. Filippidis present. Mr. Carrier was also present, but remotely.

[88] The first simulation took place from November 9 to 10, 2021. It dealt with the American contract. According to the assessment document signed on November 18, 2021, the grievor failed the simulation. Specifically, the three assessors concluded that the grievor did not meet the basic criteria. The grievor still had significant shortcomings at various levels. According to Mr. Carrier, she only met 40% of the expectations. The assessment revealed that the grievor had not followed certain procedural steps, had difficulty explaining her role and mandate, and had been unable to provide clear explanations and focus on important issues. The grievor had shortcomings in terms of structure, cohesion, and follow-up. She provided inaccurate,

misleading, and sometimes inconsistent explanations. She refused to take responsibility for her shortcomings and tried to shift the blame onto the trainers.

[89] Following this assessment, the trainers met with the grievor to explain what she had not done well and why, so that she would not repeat the same mistakes during the second simulation. They went through each point with the grievor while explaining to her what had not worked well and what she needed to do to succeed.

[90] The simulation for the revision of the Canadian contract took place from November 22 to 23, 2021. The assessors identified gaps and difficulties similar to those detected during the review of the American contract. In summary, the grievor did not demonstrate that she understood her role and responsibilities, she relied on outdated information, she did not validate the contractor's understanding, etc. The assessors did not notice any significant improvement when compared with the first simulation. According to Mr. Carrier, the grievor performed worse during the second simulation.

[91] Mr. Carrier testified that due to the very negative comments they received from the grievor following this second assessment, the trainers contacted Mr. Moreau and requested a meeting with Human Resources. During this meeting, they said that due to the grievor's behaviour, they could no longer continue their training. According to Mr. Carrier, the grievor received more training than her colleagues; he spent more time with her than with other colleagues.

[92] As for the grievor, she disagreed with the assessments she received from the trainers. In her opinion, what the trainers said was not true. According to her, the assessments were not fair. She gave her best performance in these assessments.

[93] Furthermore, the grievor argued during her testimony that the assessment of the simulation exercise of the American and Canadian contracts [translation] "was not honest" and that it had been done [translation] "in an imaginary context". She believed that for criticism of her work to be constructive, it needed to be well justified. If it was not, she had the right to ask for evidence to support it, and that is what she was doing.

[94] She regularly challenged the trainers' comments that identified gaps and argued with them about the validity of their feedback. According to the grievor, being told that

you are struggling with a subject is a personal attack. She stated the following:
[translation] “It’s disrespectful to say that someone is struggling”.

[95] Lastly, the grievor was not satisfied with the way Mr. Carrier had shown her how to do the work. She felt harassed by him. In her opinion, she did not receive the proper training to learn well. She did not acknowledge that she had difficulty identifying the important elements. According to her, she always gave her best effort. She did everything possible to improve herself.

[96] During cross-examination, the grievor admitted to spending several hours a week, in the morning and afternoon, with the trainers as part of her action plan. She also admitted that Mr. Carrier listened to her questions, answered them, and provided her with training. On the other hand, according to her, there was a toxic environment because she was told that she did not understand.

[97] In connection with the discrimination, the grievor did not recall telling her superiors or colleagues what her religion was and did not tell them what her ethnic origin was.

E. Rejection on probation

[98] Mr. Moreau testified that despite their efforts to help the grievor complete the ODP, as he personally wanted her to succeed, the grievor was unable to demonstrate that she was improving.

[99] As a result, given the grievor’s ongoing performance issues and her lack of progress, the respondent decided to terminate her under s. 62(1) of the *PSEA* effective January 31, 2022. The reasons justifying the termination and the efforts made to help the grievor complete the ODP are detailed in the termination letter.

[100] In accordance with s. 62(2) of the *PSEA*, the grievor was paid until February 28, 2022. The termination letter was signed by Ms. Sewell.

F. Harassment complaints made by the grievor following the termination

[101] A few months after being terminated, the grievor filed a harassment complaint against: 1) Mr. Tremblay on the ground that he was spreading [translation] “misinformation” and [translation] “abuse of authority with the intent to NOT help [her] complete the ODP program”; 2) Mr. Moreau for [translation] “deliberate

negligence and ignorance to prevent harassment and violence in [her] workplace, committing ethnic cleansing”; 3) Mr. Sirois on the grounds of [translation] “verbal violence, psychological harassment, discrimination, spreading misinformation, and not providing the appropriate support for [her] work”; and 4) Mr. Carrier on the grounds of [translation] “verbal violence, religious discrimination, spreading misinformation, not providing appropriate support for [her] progress in [her] workplace”.

[102] According to the findings of the investigation conducted by an outside firm, none of the allegations raised in the grievor’s complaints were substantiated.

[103] In her general conclusions, the investigator concluded that there was [translation] “... consistent evidence indicating that the parties involved went above and beyond their responsibilities to ensure that Ms. Pourfard received an adequate level of support”.

[104] The grievor rejected the investigator’s findings. According to her, the managers were always telling her that she did not understand the work she was supposed to do. In her opinion, although she worked well, the managers always made negative comments about her.

IV. Reasons

[105] The respondent objected to the Board’s jurisdiction to hear this referral to adjudication. Its objection is based on the exclusion set out in s. 211(a) of the *Act*.

[106] For the following reasons, I allow the respondent’s objection and deny this grievance for lack of jurisdiction.

A. Rejection on probation — legal framework

[107] According to s. 61(1) of the *PSEA*, a person appointed from outside the public service is on probation for a period established by regulations of the Treasury Board. Specifically, this refers to the *Regulations Establishing Periods of Probation and Periods of Notice of Termination of Employment During Probation* (SOR/2005-375; “the *Regulations*”).

[108] The *Regulations* specify not only the duration of the probationary period but also the notice period that must be given to the employee being rejected on probation. This timeframe varies depending on the category of employee. Section 62(2) of the

PSEA allows for the employee to be paid compensation in lieu of notice. It must be equal to the salary they would have been paid during the notice period.

[109] The grievor was part of the class of employees who are recruited into an apprenticeship or professional training program and whose appointment is for a period of more than one year. The duration of the probation for this class of employees is the duration of the apprenticeship or professional training or 12 months, whichever is longer. As for the notice period, it was set at one month.

[110] Section 211(a) of the *Act* does not allow a grievor to refer a termination grievance for adjudication under the *PSEA*. The relevant excerpt of this provision reads as follows:

Exception

211 Nothing in section 209 or 209.1 is to be construed or applied as permitting the referral to adjudication of an individual grievance with respect to

(a) any termination of employment under the Public Service Employment Act; or

...

Exclusion

211 Les articles 209 et 209.1 n'ont pas pour effet de permettre le renvoi à l'arbitrage d'un grief individuel portant sur :

a) soit tout licenciement prévu sous le régime de la Loi sur l'emploi dans la fonction publique;

[...]

[111] That being said, despite the exclusion provided in s. 211(a) of the *Act*, the case law recognizes that the Board has jurisdiction to hear a grievance contesting a rejection on probation as long as the decision to terminate is not based on a legitimate employment-related reason. An arbitrary, discriminatory, or bad faith termination (including a sham or camouflage) does not constitute a valid termination under s. 62 of the *PSEA* and may be adjudicated by the Board under s. 209 of the *Act* (see *Holowaty v. Deputy Head (Correctional Service of Canada)*, 2022 FPSLREB 44 at paras. 9 and 10).

[112] It is important to remember that employers are afforded considerable discretion to assess the suitability of probationary employees and there is minimal scope for review of their decisions, as confirmed by the Federal Court of Appeal in *Canada (Attorney General) v. Alexis*, 2021 FCA 216 at para. 10.

[113] A termination under s. 62 of the *PSEA* is characterized by the following elements:

- 1) the employee was placed on probation;
- 2) the employee's probationary period was still in effect as of the termination;
- 3) notice or pay in lieu was provided; and
- 4) employment-related concerns about the employee's suitability were the reason for the termination.

[114] The reasons for termination are generally stated in the termination letter (see *Tello v. Deputy Head (Correctional Service of Canada)*, 2010 PSLRB 134 at para. 111). The presence of these elements creates a presumption that the grievor was rejected on probation under s. 62 of the *PSEA*. To reverse it, the grievor must establish that their termination was arbitrary, discriminatory, or in bad faith (including a sham or a camouflage). If they fail, the Board will not have jurisdiction to address the grievance challenging their rejection on probation (see *Holowaty*, at paras. 11 to 13; and *Tello*, at para. 111).

B. The grievor did not meet her burden of proof

[115] The grievor is not challenging that she was on probation under s. 61 of the *PSEA* at the time of her termination. In fact, according to the *Regulations*, she was subject to a probationary period corresponding to either the duration of the training program or 12 months, whichever period was longer. According to the evidence, the grievor was rejected on probation while the training program was ongoing (that is, during the ODP).

[116] The termination letter also states that instead of a notice period, which, according to the *Regulations*, is set at one month in the grievor's case, she would receive compensation. In fact, the termination letter states that the grievor would be paid for the entire month of February, in accordance with s. 62(2) of the *PSEA*.

[117] This brings us to review the reasons put forward by the respondent in support of its decision to reject the grievor on probation. According to the termination letter dated January 31, 2022, the respondent terminated the grievor due to her continued inability to meet the requirements of her trainee position in the ODP and to achieve work objectives, despite having received significant informal and formal training, guidance from her management team as well as several trainers who were hired to provide her with specific training and support since October 2019.

[118] According to the letter, the grievor was unable to show any improvement in her performance despite the guidance and support received. Specifically, it mentions that she continued not to follow instructions, did not learn from her mistakes, and was unable to show that she understood her role as a trainee to become a quality assurance representative. Furthermore, she continued to struggle with essential skills such as demonstrating integrity and respect, thinking things through, and working effectively with others.

[119] The reasons mentioned by the respondent in its letter dated January 31, 2022, in support of its decision to reject the grievor on probation are, in my opinion, clearly employment related.

[120] Although she had the burden of proof, the grievor did not succeed in establishing that her termination was arbitrary, discriminatory or in bad faith. In other words, she did not demonstrate that she was terminated for a reason unrelated to employment.

[121] The grievor was unable to refute the respondent's evidence that, despite having received additional guidance and support intended to help her complete the ODP and advance to the TI-05 level, she failed to meet work objectives and improve her performance.

[122] The essence of the grievor's evidence is based on the fact that she disagreed with the recommendations and assessments made by the managers and her trainers to help her. In her opinion, she was doing her job well. I disagree.

[123] The evidence presented by the respondent clearly shows that the grievor had significant shortcomings in her performance, despite having received additional training intended to help her complete the ODP. It was because of her ongoing inability to meet her work objectives that she was rejected on probation.

[124] Lastly, the grievor's claim that she did not receive the appropriate training to properly learn her job is not supported by evidence. The grievor did not demonstrate how the mentoring, recommendations and advice she received were inadequate or did not help her improve her skills.

[125] With respect to the allegations of discrimination, I note that the prohibited grounds of discrimination raised by the grievor vary over time. Let me explain. On the Federal Public Sector Labour Relations and Employment Board Act and Federal Public Sector Labour Relations Act

grievance form, in the section for requested corrective action, the grievor requested that no disciplinary action be taken against her due to the following prohibited grounds of discrimination: [translation] "... age, race, belief, colour, national or ethnic origin, religious affiliation, sex, sexual orientation, gender identity or expression, family status, marital status, mental or physical disorders, disability, membership or activity in the Alliance, etc."

[126] In the notice to the Canadian Human Rights Commission, attached to the form for referring the grievance for arbitration, the grievor stated that the prohibited ground of discrimination was disability. A few weeks before the hearing, before the bargaining agent stopped representing the grievor, her representative stated in the letter dated June 30, 2025, that the prohibited grounds of discrimination were race, religion, and national or ethnic origin.

[127] During the hearing, the grievor alleged that she had been a victim of discrimination based on religion, following Mr. Carrier's comments that it was inappropriate to include the Ten Commandments in a working document. It was not clear during the hearing whether the grievor still maintained that she was being discriminated against on the basis of race and national or ethnic origin. However, during her cross-examination, the grievor specified that she did not remember mentioning to her superiors or colleagues what her religion was and confirmed that she had not told them what her national or ethnic origin was.

[128] The grievor did not establish, at first glance, as she had the burden, that her religion, race, or national or ethnic origin was a factor in the respondent's decision to reject her on probation. A *prima facie* case in this context is one which covers the allegations made and which, if they are believed, is complete and sufficient to justify a verdict in the complainant's favour in the absence of an answer from the respondent-employer (see *Ont. Human Rights Comm. v. Simpsons-Sears*, [1985] 2 S.C.R. 536 at para. 28; and *Moore v. British Columbia (Education)*, 2012 SCC 61 at para. 33).

[129] Before the Board, the grievor remained silent about her religion. She did not establish that she was a believer or that she adhered to a particular religion or religious denomination. I refuse to speculate on the grievor's beliefs or religious affiliation solely based on her reference to religious expressions that she incorporated

into a working document. However, the grievor was responsible for establishing that her religion or beliefs were a factor in the decision to reject her on probation. She did not do so. Specifically, aside from the fact that the grievor had not established that she adhered to a particular religion or religious denomination, she also did not demonstrate that religion played any role in her rejection on probation.

[130] On that note, I would like to take a moment to digress. Mr. Carrier agreed to act as a trainer for the grievor. He was tasked with helping the grievor meet her work objectives and complete the ODP. He was supposed to provide her with feedback on the quality of her work and on the areas to improve. In this context, it was his duty as a trainer to inform the grievor that certain remarks, comments or words, such as religious expressions, had no place in a working document in the field of quality assurance. During the hearing, it became apparent that the grievor refused to accept that some behaviours or comments could be inappropriate in the workplace. She wanted to do things her way and regularly challenged the advice that her supervisors and trainers gave her to help her improve.

[131] As I mentioned earlier, at the end of the hearing, it was not clear whether the grievor still maintained that she had been discriminated against because of her race or national or ethnic origin. However, out of an abundance of caution, I will briefly address this issue.

[132] First of all, the grievor confirmed that she had never told her superiors or colleagues what her ethnic origin was. At the hearing, the grievor did not specify what her race or national or ethnic origin was. In the end, she did not establish that her race or national or ethnic origin, whatever they may be, had been a factor in her rejection on probation.

[133] In short, the grievor has not established a *prima facie* case that a prohibited ground of discrimination was a factor in her rejection on probation. As I have already stated, the grievor was terminated due to her inability to perform the work at the expected level, despite the efforts made by the respondent to help her succeed in the ODP. This constitutes a legitimate employment-related reason.

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

(The Order appears on the next page)

V. Order

[135] The grievance is denied for lack of jurisdiction.

February 2, 2026.

FPSLREB Translation

**Adrian Bieniasiewicz,
a panel of the Federal Public Sector
Labour Relations and Employment Board**