

T.D. 12/92

THE CANADIAN HUMAN RIGHTS ACT  
R.S.C., 1985, c. H-6 (as amended)

HUMAN RIGHTS TRIBUNAL

BETWEEN:

CHANDER P. GROVER

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

NATIONAL RESEARCH COUNCIL CANADA

Respondent

DECISION OF THE TRIBUNAL

TRIBUNAL: CARL E. FLECK, Q.C. - Chairman  
RUTH S. GOLDHAR - Member  
KATHLEEN M. JORDAN - Member

APPEARANCES: Peter C. Engelmann, Counsel for  
Canadian Human Rights Commission

Brian J. Saunders and Alain Prefontaine,  
Department of Justice, Counsel for Respondent

David Bennett, Counsel for Complainant

DATES AND LOCATION

OF HEARING: January 24, 25, 26, 29, 30, 31, 1990  
February 1 and 2, 1990  
April 4, 5, 6, 7 and 9, 1990  
May 15 and 16, 1990  
January 28 and 29, 1991  
February 2, 1991

March 20, 21, 22, 23 and 25, 1991  
May 22 and 23, 1991  
June 24, 1991  
OTTAWA, ONTARIO

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## BACKGROUND

Chander P. Grover (also referred to as "the Complainant"), filed a complaint with the Canadian Human Rights Commission, (hereafter "the Commission") in which he alleged that from September 1986 to August 1987, his employer, the National Research Council Canada (hereafter "NRC" or "Respondent") had engaged in discriminatory practices against him contrary to s. 7 of the Canadian Human Rights Act (hereafter "the Act") on the grounds of his race (East Indian), colour (brown) and national origin (India). Particulars contained in the said complaint referred generally to the actions of two persons in management, namely the directors Dr. H. Preston-Thomas and Dr. M. Laubitz. In general terms, the Complainant alleged that by reason of the actions of these two individuals his career had been ignored, he was denied managerial and promotional opportunities and had systematically been denied managerial and research responsibilities, all because of his race, colour and national origin.

Full particulars of the complaint dated September 17, 1987 can be found in the Exhibit Book of the Commission (hereafter Exhibit Book "HR-1").

On or about the 1st of August, 1989 the Complainant filed an amended complaint on an amended complaint form (hereafter "1st amended complaint") with the Commission in which he reiterated the allegations complained of in his complaint of September 17, 1987 and alleged that NRC continued to discriminate against him in the course of his employment, contrary to s. 7 of the Act. In this complaint he detailed examples of the discriminatory incidents he alleged occurred from September 1987 to the date of the complaint, August 1, 1989. There were some ten separate incidents of which he gives particulars reciting in detail dates, places and persons involved.

It should be noted that this Tribunal commenced its inquiry into the original and 1st amended complaint on or about the 22nd of January 1990, and thereafter received evidence on January 24th, 25th, 26th, 29th, 30th, 31st, February 1st, February 2nd, April 4th, 5th, 6th, 7th, 9th and May 15th and 16th, 1990. The Tribunal then adjourned to allow the parties an opportunity to discuss a satisfactory resolution of the complaints. The parties were unable to achieve settlement. Indeed, before the Tribunal

reconvened on January 28th, 1991 the Complainant had been terminated by letter dated November 7, 1990 from the Executive Vice-President of NRC. Termination date was to take place on May 13th, 1991.

When the Tribunal reconvened on January 28th, 1991 to complete the hearing, we received into evidence a further amended complaint (hereafter "2nd amended complaint") in which Dr. Grover alleged from August 1989 to January 1991, the NRC continued to engage in discriminatory practices against him, contrary to s. 7 of the Act. The Tribunal continued to hear further evidence through the days of January 28th, 29th, February 2nd, March 20th, 21st, 22nd, 23rd, 25th and May 22nd, 23rd, 1991. The Tribunal then adjourned to June 24th for the conclusion of final argument by counsel for all parties. On that date, the Tribunal was advised by counsel for NRC that in fact NRC had decided to annul the termination of November 7th, 1990. Dr. Grover was to be reinstated into the position that had been offered to him in a letter from one Dr. Perron dated August 8th, 1990. These unusual events regarding Dr. Grover's employment status,

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following the 2nd amended complaint served only to compound the concern the Tribunal had for the treatment of this Complainant by NRC. These developments will be referred to in further detail in our decision.

The 2nd amended complaint reiterated the allegations made in the complaints of September 17, 1987 and August 1st, 1989 and alleged further discrimination against the Complainant, in the course of his employment contrary to s. 7 of the Act. The particulars are set out in nine paragraphs attached to the complaint form which is found in Exhibit HR-29.

It is important for a full understanding of his complaints to view in detail the background of the Complainant and his career development leading up to events which are outlined in the original complaint.

Dr. Chander P. Grover was born in India on August 10th, 1942 and came to Canada in 1978. He is married, has two children and his ethnicity is Hindu-Canadian.

In 1962, he received a B.Sc. in physics, chemistry and math from the University of Delhi. In 1964, he received a M.Sc. in physics from the University of Delhi. By 1966, he had completed a post-doctorate degree in physics at the Indian Institute of Technology in Delhi. In 1971, he entered the University of Bris (France) and by 1973, had achieved the equivalent of a doctorate degree referred to as Docteur D'Etats Sciences (D.Sc.) Université de Paris VI. Throughout his formal university training,

he received a number of awards and research fellowships, both in India and Paris. The doctorate degree he received from the University of Paris was with high distinction. In addition to his mother tongue(s), Dr. Grover is fully bilingual in English and French and his written research for his doctorate was in the French language.

During his Masters Degree and Doctorate Degree, he held a number of positions. During 1966 to 1970, he worked at the National Physical Laboratory of India at New Delhi and was responsible for setting up new research groups for the tabulation, testing and design of optical components. The position also consisted of the training of a number of persons in his profession. During 1975 to 1978, he was the senior scientist of the Indian Space Research and was responsible for setting up research in greater detail in the area of optical design, optical testing and optical manufacturing.

In 1978, Dr. Grover immigrated to Canada and worked on term positions with the University of Toronto and several other companies in the Toronto area on the development of systems for optical testing, fibre-optic sensors and holography. Through 1980 to 1981, he worked at Laval University and continued his research in the areas of fibre-optics, laser speckle interferometry and holography.

Early in 1981, Dr. Grover applied for and was accepted in a position of Associate Research Professor at National Research Council. He was selected out of twenty applications answering an advertisement for a physicist specializing in optics. The Director's recommendation approving Dr. Grover's appointment indicates that he was clearly the most outstanding and best candidate for the position with an excellent education in optics and an exceptional research record. The Director further found that Dr. Grover, on a tour of the optics laboratory at NRC, demonstrated a thorough knowledge of the projects and facilities and participated actively in those

related discussions. (see Exhibit R-18 letter from Carmen to Wyzecki). It was the Complainant's evidence that at the time of his initial hiring in 1981, he was given the task of rejuvenating the optics activities of the Physics section. He was also provided with generous support both in terms of financial and human resources. It was at that time that he fell under the guidance and direction of Dr. Gunter Wyzecki. From the evidence the Tribunal concludes that Dr. Wyzecki was a world-renowned scientist and an expert in several fields of optics. Dr. Grover and Dr. Wyzecki formed an immediate and close bond, and it goes without saying that Dr. Wyzecki was

his mentor. He provided a tremendous influence for the development of Dr. Grover's career up to the time of his death in 1985.

During 1984, NRC formed a task force to investigate the need for optics research and development in Canada. Dr. Wysecki became chairman of the task force and invited Grover to join him as assistant. These two men formed the total compliment of the task force. The task force conducted hearings during the period extending from February 9th to April 5th, 1984.

Further meetings were held with participation from Canadian Universities, industry and government agencies and these open meetings took place in Ottawa, Toronto, Vancouver and Quebec City. In addition, the task force consisting of Drs. Grover and Wysecki travelled to the University of Rochester Institute of Optics, the Optics Section of the Imperial College in London, the University of Arizona Optical Science Centre in Tucson and the Optics Centre in Electrical Optics Research in Paris. The task force prior to completion of the report was expanded to include four other members. Its report is set out at Exhibit R-3.

Obviously, the extensive involvement of Dr. Grover in this task force provided him with tremendous insight into the growing need and market for optic research. It also provided him with international contacts to assist him with ongoing research. During the summer of 1984, there was a proposal made by the task force to the steering committee of Parliament and subsequently cabinet approval was given to establishment of the Institute of Optics. This announcement was made in the summer of 1984. It should be noted that at this point of time, the Institute of Optics was to be structured within the division of physics of NRC. Dr. Wysecki was appointed as the first director of the Institute of Optics, which was created as a new division of NRC. He became the director in 1984 and at that point he and Dr. Grover started putting together a team, which would be transferred from the existing activities in the division of physics at NRC into the new division of the Institute of Optics.

At Exhibit HR-20, there is contained a brief prepared by Dr. Wysecki for Dr. H.R.F. Pottie of NRC, outlining his action plan for setting up the Institute of Optics within NRC. It is to be noted that according to his plan the Institute of Optics would require four section heads and staff under each of the section heads. These section heads would come from transferred NRC staff. The Tribunal concludes that because of Dr. Grover's extensive involvement in the establishment of the Optics Institute and his background in Optics Research as demonstrated by his

qualifications, he would have been a likely candidate for at least one of the section heads of the Institute of Optics.

Unfortunately, in January of 1985 Dr. Wyszecski fell seriously ill and NRC delegated Dr. Wyszecski's position and authority on an interim basis to Dr. Grover. The Complainant became at that time the acting interim director of the Optics Institute. In this position he had the power to execute documents on behalf of OI. The fullness of his authority was downplayed by the Respondent, however, the documentary evidence filed at this hearing confirmed that Dr. Grover had full acting authority. He held this position for approximately two months up until April of 1985.

In April of 1985, a decision was made between the Government of Canada and the Government of Quebec to jointly fund the Optics Institute as a separate entity outside of NRC, now called the National Optics Institute or NOI. An agreement was signed relating to the cooperation of the various fields of technology within the Institute of Optics. According to this agreement, NRC was given the task of building the optics institute up to a point where it would become operational. It was at this point that Dr. Grover was given the role to continue all aspects of the work which would render the Optics Institute operational. An inter-departmental committee was set up in the Optics Institute consisting of members of NRC, Public Works Canada and Supply and Services Canada. Dr. Grover was given the task of coordinating the construction of the Optics Institute, including specifications for the buildings and the labs, setting up of programmes and proposals for the hiring of prospective personnel.

A project status as of March 22nd, 1985 (found at Exhibit HR-3, tab 5) outlines the basic mission statement of the Institute of Optics and sets out its acting executive, which included Dr. Grover as the acting assistant director, as well as acting section head for the Electro-Optics group and the Image Science Group. It should be noted that within the proposed group of acting section heads are included Dr. Cowan and Dr. Powell. At this point, approximately fifteen persons had been transferred from the Division of Physics at NRC to a section of the Optics Institute, which included both Dr. Cowan and Dr. Powell as well as Dr. Grover. By 1986, all of the fifteen persons originally transferred had been reassigned to the Division of Physics at NRC.

In the early part of 1986, certain developments took place which were to begin a chain of events for Dr. Grover, which ultimately formed the basis for filing his complaints. A board of directors was put in place for the Optics Institute which in fact became known as the National Optics Institute (hereafter "NOI"). This new board of directors was in place in January 1986, and started inquiries as to personnel placement for the

management operation of the institute. Paul Major was appointed as the first chairman of NOI and his official duties commenced in December 1985.

Mr. Major testified at these proceedings. The Tribunal was impressed with the candour and objectivity of his testimony. He testified that he met Dr. Grover in January of 1986. As a result of certain discussions with board members, in particular Dr. Gingras and Dr. Redhead, it became apparent to Mr. Major that Dr. Grover would be the natural person to assist in setting up NOI. He based his opinion on the fact that Dr. Grover had been involved

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in the original studies establishing NOI and also had been Dr. Wyszeccki's right hand man. In addition, Dr. Redhead indicated that NRC would be prepared to loan Dr. Grover to NOI for a period of time. As a result of these discussions, Dr. Grover became the interim scientific director.

Mr. Major testified that he very quickly recognized that Dr. Grover was an authority on optics. He became aware that Dr. Grover was well known in scientific circles by reason of the different conferences and symposiums that he had attended. Mr. Major had Dr. Grover enter into a secondment agreement which is found at Exhibit HR-3, tab 9. This agreement was to run for a period of eighteen months commencing April 1986. The terms were to allow Dr. Grover to receive salary and benefits from NRC and NOI undertook to reimburse NRC for Dr. Grover's salary or the portion thereof for the time he worked at NOI. It was also agreed that upon completion of the secondment, Dr. Grover would return to NRC. According to his testimony, it was clear to Mr. Major that Dr. Grover did not want to cut off entirely his ties with NRC because of his ongoing research projects at NRC.

Mr. Major testified that the mandate given to Dr. Grover by NOI was three-fold, namely to act as scientific advisor for the construction of the laboratories, to set up in detail the scientific programmes and further to start the recruiting of scientists and technical staff for the institute. It is of importance to note that in Mr. Major's opinion, Dr. Grover performed all of these tasks quite well. He was very happy with his services.

On October 6, 1986 Mr. Major made an offer to Dr. Grover to fill the position of scientific director for NOI. Dr. Grover agreed to communicate in due course with Mr. Major as to his decision. In January 1987, Dr. Grover declined to accept the position as offered and the secondment agreement was terminated as of February 1987.

Up to the year 1986, the career development of Dr. Grover appeared to be from the evidence heard at the proceedings, on a dynamic and upward trend. Dr. Cowan, a fellow scientist, testified as to the expertise and outstanding qualifications of Dr. Grover as a scientist. This Tribunal was impressed by the evidence of Dr. Cowan and accepts in total his assessment of Dr. Grover's expertise in the field of optics. Coupled with the evidence of Mr. Major, this Tribunal is satisfied that the appropriate classification of Dr. Grover's career as of 1986, was that of an outstanding scientist with high peer recognition internationally and a scientist who was conducting on behalf of NRC important work in several fields of optics.

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It is further confirmed in the memorandum of Dr. A.R. Robertson (found in Exhibit R-37 pp. 189-191) that Dr. Grover was in fact conducting research and the head of a group. In the memorandum dated January 13th, 1986, (found at Exhibit HR-3, tab 7), Dr. Robertson thanks Dr. Grover for keeping Pierre Verly in the Electro-Optics Group. Dr. Robertson felt that the change would be beneficial to Dr. Verly's career and that it would provide Dr. Grover with more manpower for tasks to which he wished to give priority. In a memorandum dated January 22nd, 1986, (found at Exhibit HR-3, tab 8), Dr. Robertson is announcing to the Photometry and Radiometry Section, of which Dr. Grover was a member, that his discussions with the directors indicated that all current activities of the section would continue and that none would stop as a result of the formation of NOI.

One aspect of the career development of Dr. Grover, which will be addressed in greater detail in this decision, was the developing problem with his promotion submissions and the proper recognition of his Years of Relevant Experience (hereafter "YRE"). From the years 1981 to 1986, the promotion submissions are strongly in favour of promoting Dr. Grover at the highest and fastest level and he received promotions without any real problem. With respect to his YRE, he brought to the attention of Dr. Preston-Thomas and Jill Baker early in 1986, the fact that he had not received his appropriate YRE. As it appears from the evidence, there was a correction of the YRE but not a sufficient correction, and the correction that was in fact completed was not reported to Dr. Grover. He found out about this correction some time in 1989. Despite the correction, he did not receive any compensation for the adjustment and at the date of this hearing no such compensation adjustment had been made.

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To summarize therefore the Complainant's career developments, and the events that led up to the start of his complaints in 1986, the Tribunal concludes from the evidence that the following occurred:

A. Dr. Grover quickly became during the period 1981 to 1986 one of the leading scientists in the field of optics both at NOI and NRC.

B. Dr. Grover really never left NRC for NOI but rather his time was split 60% of his activities being completed at NRC with research and 40% of his activities with the development of NOI in his capacity as assistant director.

C. NRC was extremely concerned that, with the change in structure of NOI, namely the joint funding by Quebec and the Government of Canada, it would lose its role in the field of optics.

D. The background experience Dr. Grover obtained in guiding NOI through its initial stages of development clearly equipped him with qualifications for an upper management position at either NOI or NRC.

E. Despite the suggestion of cutbacks at NRC in early 1986, all of the research projects involving the fifteen transferred scientists from the Department of Physics to NOI remained intact when those persons returned which included Dr. Grover.

F. Dr. Grover turned down the offer by NOI to become its director and decided upon resuming his full-time career at NRC in research. His full-time return became an apparent sore point with the new Director of Physics, namely Dr. M. Laubitz.

G. Despite Dr. Grover's plans to return in 1986 to full time work at NRC, his return was not going to be facilitated by Dr. Laubitz or Dr. Preston-Thomas, the assistant director.

As previously indicated, 1986 was the starting point of Dr. Grover's career problems at NRC, which gave rise subsequently to complaints of discrimination. Upon Dr. Grover's return to full-time work in the division of physics in 1986, a number of changes had taken place. The Director of the Division of Physics, Dr. Redhead, retired and he was replaced by Dr. M. Laubitz. The division formerly known as the Optics Section became known as the Photometry and Radiometry Section. The Division of Physics was undergoing reorganization and with respect to optics, clearly was struggling to arrive at a cooperative working relationship with NOI. At the same time, NRC was launching upon a forty million dollar consortium in the field of optics, and both Dr. Laubitz and Dr. Vanier played a significant part in this project. The initial

announcement of this project caused considerable concern amongst various institutes in related fields, which finally led to the signing of a scientific entente in 1988.

There is little doubt that Dr. Grover aspired to a position of management with the Division of Physics, and specifically that of a Section Head. The responsibilities of a section head within the Division of Physics would have called for added responsibility including the evaluation of the performance of staff, allocation of funds including travel funds, involvement with research planning and promotions. It should be noted that prior to Dr. Grover's return from NOI, he had been acting in the capacity of assistant director and acting scientific director, and in the mission

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statement of NOI was slated for a section head

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position along with other of the transferred members from the Division of Physics, namely Dr. Cowan and Dr. Powell. The initial promotion assessments from 1981 through to 1984, coupled with the evidence of Mr. Major and Dr. Cowan, clearly lead this Tribunal Board to conclude that Dr. Grover was qualified to assume the position of Section Head and was quite capable of fulfilling the responsibilities relating to such position.

The evidence clearly leads us to conclude that as late as 1985, Dr. Grover was in charge of an "Electro-Optics" group which consisted of Dr. Verly, Mr. Agarwal, Dr. Hane and the technical officer Ray Fink. These are described in Exhibit HR-4 in the activity reports of 1984-85. Dr. Laubitz, Dr. Preston-Thomas and Dr. Vanier spent considerable time in their evidence endeavouring to deny the existence of such a group with Dr. Grover as group leader. Their attempts to deny the existence of such a group, were in the Tribunal's opinion merely an attempt to downgrade Dr. Grover's status within NRC. Their evidence simply cannot be accepted as it is not borne out by the facts contained in the activities reports, as well as the evidence heard during this hearing.

The Board concludes that of all the persons returning to NRC from NOI, no one was more qualified to play a major role in optics in the division of physics than was Dr. Grover. The esteem by which he is held, and the ready acceptance of his reputation within the field of optics, both at NOI and in the international community, was obvious and apparent to the Tribunal according to the evidence we heard. The fact that Dr. Grover

expected to play a significant role in optics, and aspiring to a section head was in the Tribunal's opinion a reasonable career expectation for this man, when he returned full-time to the Division of Physics in the early part of 1986.

Dr. Grover's problems with the new director of the Division of Physics, Dr. M. Laubitz, started very early upon his full-time return to NRC. Mr. Major testified that in the mid part of 1986, after the retirement of Dr. Redhead, he arranged a meeting with Dr. Laubitz and Dr. Vanier, to review the co-ordination of scientific programmes at NOI and NRC. It is a fact that at this time, Dr. Grover was the continuing interim scientific director of NOI. In June of 1986, this meeting took place and Mr. Major suggested to Dr. Laubitz that Dr. Grover be in attendance. Dr. Laubitz rejected the idea of Dr. Grover's presence and advised him that he would prefer to leave Grover out of this meeting. Mr. Major obviously was surprised at Dr. Grover's exclusion, and felt that he would have been a logical person to be at this meeting, in view of his position and background with NOI. The Tribunal finds that the exclusion of Dr. Grover at this meeting made little sense, and can only be seen as the start of a series of events orchestrated by Dr. Laubitz to downgrade, demean and frustrate the career of Dr. Grover.

In his testimony Dr. Laubitz' explanation of why he excluded Dr. Grover is found in Volume 10, p. 1341 and 1342 wherein he testified as follows:

"Q. What was the purpose of the meeting?

A. The main purpose of the meeting was for me to get to know Dr. Major. A secondary objective was to try to see how the relationships between the technical programs of the National Optics Institute and the Division of Physics could be correlated, and thirdly, sort of

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general information on the stage at which they had appointed technical personnel so that we could correspond with them in more detail.

Q. Was Dr. Grover discussed at the meeting?

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A. Only in the sense that Dr. Major had asked whether Dr. Grover should be present and we recommended that no.

Q. Why did you recommend that?

A. It was an official meeting in a sense. It was generally trying to get the atmosphere of cooperation going and I didn't see the necessity for Dr. Grover to be present."

The Tribunal finds that this explanation is pretextual.

Obviously, with Dr. Grover operating under a secondment agreement and providing forty percent of his time to NOI what more logical liaison person than Dr. Grover to participate in such a meeting.

Some time between April 6th and April 14th, 1987, Dr. Grover received a call from Mr. Andre Fortier, formerly a representative of the Ministry of State, Science and Technology attached to co-ordinate works on the Optics Institute. Mr. Fortier was interested in obtaining certain information from Dr. Grover about the Optics Institute in order to prepare a report. Mr. Fortier requested that Dr. Grover meet with one of his contacts who was involved with the Optics Institute and the Government.

Dr. Grover thought that he should seek the approval of Dr. Laubitz, and attended at his office to request that he urgently respond to his message.

Dr. Laubitz finally came to Dr. Grover's office on April 13th, 1987 and when the matter of Mr. Fortier's request was discussed, Dr. Laubitz advised Grover he was not to have any further contact with people at Optics Institute. Mr. Major in his testimony voiced surprise that after the termination of the secondment agreement in January 1987, he had no further contact with Dr. Grover, even though he expected that in view of his background with NOI, Dr. Grover would have continued to have major role of liaison on behalf of NRC. Dr. Laubitz' treatment of Dr.

Grover regarding the conclusion of the secondment agreement is found in his testimony in Volume 10, pp. 1338.

The meeting of April 13th, 1987 was particularly pivotal in terms of the relationship of Dr. Grover and Dr. Laubitz. The full account of the content of the exchange between Dr. Grover and Dr. Laubitz at that meeting will be dealt with in detail further on in this decision. Insofar as further contact and liaison with NOI, the Tribunal finds that Dr. Laubitz clearly intended to neutralize Dr. Grover's status and effectiveness in his ongoing dealings with NOI. The Tribunal finds in this regard that Dr. Laubitz' treatment of Dr. Grover was deliberate and calculated to demean

his career status. For several months in 1986, Dr. Grover called Dr. Laubitz' office and attempted to set up a meeting. Dr. Laubitz failed to respond to Dr. Grover's requests. A review of Dr. Laubitz' testimony, which occupied a great deal of the hearing time, does not provide any reasonable explanation as to why Dr. Laubitz chose to ignore Dr. Grover's attempts at contacts. Indeed, Dr. Laubitz' evidence in this regard is vague and lacking in any real explanation for his behaviour. There was no evidence called by the respondent to suggest this was Dr. Laubitz' normal way of dealing with people. Dr. Grover quite accurately testifies of his repeated attempts to call and leave messages. The Tribunal finds that Dr. Laubitz' treatment of Dr. Grover throughout these various attempts, was more than a matter of poor administrative skills on the part of Dr. Laubitz, but rather an attitude of indifference towards Dr. Grover's position at NRC upon his return in 1986. It was an attitude of indifference which was demeaning and inexcusable. Dr. Grover raised this issue in a grievance which is found at Exhibit R-4.

The grievance decision was written by D.D. Leddy and contains the following comment at p. 3:

"The one clear area of neglect is the time delay for the Director to respond to any request for discussion by a senior researcher in his division."

It is noted that in this final level grievance, Dr. Leddy endeavoured to explain for the benefit of Dr. Grover that his complaints are more a series of misunderstandings of himself and Dr. Laubitz, arising out of events over which neither party had any control. The Tribunal cannot agree with Dr. Leddy's conclusions. Dr. Leddy's decision was nothing more than an attempt to excuse Dr. Laubitz' insensitivity and attitude of indifference of Dr. Grover's career.

Dr. Grover's attempts through 1986 to define a role for himself in the Division of Physics, particularly in the Photometry and Radiometry Section were basically unsuccessful. In January, 1987 Dr. Grover was able to meet with Dr. Laubitz and confirmed that he was not going to take up a position with NOI as offered by Mr. Major, and that he would be returning full time to the Division of Physics (NRC). He also advised Dr. Laubitz that Mr. Major wanted the secondment agreement terminated and Laubitz advised that such a request would have to come from Mr. Major. It was at this time, that Dr. Grover discussed with Dr. Laubitz where he would fit in to the Division of Physics. Dr. Laubitz then requested that Grover give him a write up of his existing activities in the Division of Physics. Dr. Laubitz had previously inferred in a meeting with Dr. Grover in the month of December, 1986 that there would possibly be a section of optics and that

Dr. Grover would be considered for section head. Dr. Grover found it unusual that Dr. Laubitz would request him to write up the activities in the Division of Physics, since he felt that Dr. Laubitz would

have already been familiar with such activities. Laubitz responded that he had every scientist do such a write up. (See Volume 10, p. 1363, ll. 20-25). The Tribunal learned however in this hearing that having a scientist do a write up as requested by Dr. Laubitz was not in fact a normal request.

In any event, Dr. Grover prepared a write up which is found at Exhibit HR-3, tab 13 and dated February 3, 1987.

Dr. Grover met in February with Dr. Laubitz and gave him the written report of his activities. In the interim, Dr. Grover continued working in the Division of Physics which included a collaboration with one Dr. Warengem. These parties met again in early March, and at that time Dr. Powell attended the meeting. Dr. Grover testified that they discussed his holographic research activities in some detail and after this discussion, Dr. Powell left. Dr. Grover then invited Dr. Laubitz to visit his research activities in the labs in the basement, which he did. Dr. Laubitz was totally non-committal about Dr. Grover's ongoing role in the Division of Physics. Dr. Laubitz asked him to further expand upon a write up on activities, which Dr. Grover did, and this write up is found in Exhibit HR-3, tab 16.

Prior to this series of meetings, there had been a notice posted in the Division of Physics on January 2nd, 1987 describing changes to the various sections. This announcement is found at Exhibit HR-3, tab 12. In this announcement, Dr. Grover is no longer mentioned as being in the Photometry and Radiometry Section and Dr. Bedford became the section head of this division. According to the notice, Dr. Grover was transferred to the Director's office, being the office held by Dr. Laubitz. This move was not

discussed in any way with Dr. Grover, nor was he given any reason for same. What had been suggested to him in September of 1986, by Dr. Laubitz was that possibly by being in Dr. Laubitz' office he could more closely follow

Dr. Grover's activities with NOI. The Complainant was assured by Laubitz, however, that he would continue in his activities in the Photometry and Radiometry Section and in December 1986, he had indicated to Dr. Grover that he was being considered as a section head.

It was apparent to the Tribunal from the evidence that by March of 1987, Dr. Grover's research activities and position within the Division of Physics had been severely restricted, and indeed his role had been left completely undefined, as were the scope of his activities and the amount of any budget for same. In March of 1987, Dr. Powell came to Dr. Grover and advised him that he had been sent by Dr. Laubitz to invite him to join his section. Dr. Powell had been named to a new section called Optical Engineering, which included activities in the optical component laboratory. Dr. Grover was in shock. He testified that Dr. Powell was a junior scientist to him and that his activities did not in any way relate to Dr. Grover's previous research activities. Dr. Powell did not testify in these proceedings.

Dr. Powell is not a visible minority scientist and indeed in 1987 there were no visible minority scientists in any of the section head or director positions nor in any of the top forty management positions at NRC.

Dr. Powell had previously been under the supervision of Dr. Grover when he was at NOI, and Dr. Grover had been the Acting Scientific Director. None of these changes were directly communicated by Dr. Laubitz to Grover. Dr. Laubitz testified that he did not recall details of some of these meetings.

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Tribunal finds that his recollection of the events was vague, uncertain and lacked the candour of a credible witness.

By April 1987, Dr. Grover was without a budget for research activities and had been directed by Dr. Laubitz to discontinue contact with NOI. He had also been appointed to work in the Director's Office without a job description, lab or any form of research mandate and had been passed over in the reorganization for consideration of a section head position.

In addition, he had his lab space reduced by Dr. Preston-Thomas, and his group, consisting of Dr. Verly, Mr. Agarwal, Dr. Hane and Mr. Fink disbanded and assigned to other research activities.

It is against this background of career setbacks that Dr. Laubitz attended at Dr. Grover's office on April 13th, 1987. This was a meeting previously referred to, wherein Dr. Laubitz restricted Dr. Grover's further meetings with NOI, as a result of his contact with Mr. Fortier. The meeting however is important in spelling out the low point in the relationship between Dr. Laubitz and Dr. Grover. The Complainant testified that Dr. Laubitz' demeanour at this meeting was that of anger and he spoke in a loud voice. Dr. Grover attempted to raise the issue of getting a budget, and further when he endeavoured to discuss his memorandum of April 6, 1987, Dr. Laubitz started accusing him of a number of things. At volume 2, p. 236, Dr. Grover testifies about the detail of this meeting as follows:

"The first thing he said was, I was a troublemaker. He said I had difficulties with my section head. I was too ambitious. He said he has heard a number of complaints from Dr. Preston-Thomas and Dr. Vanier about me. He said he knew I wanted to be a section head. He said he knew I wanted to be a director. He said he would see to it that I would never become either."

Dr. Laubitz was examined and testified as to his recollection of this portion of the meeting. His memory of the conversation is vague and uncertain. The Tribunal accepts Dr. Grover's version of this meeting and finds that Dr. Laubitz' account of these events is simply not worthy of belief. His manner of giving evidence was evasive, his conclusions totally implausible and his explanations, in particular for the way he conducted himself as Dr. Grover's superior, were inexcusable, insensitive and demeaning to a fellow scientist.

Dr. Grover testified that Dr. Laubitz left this meeting abruptly and advised him that he would be sending a memo. Dr. Laubitz did respond by memo dated April 13, 1987 (contained at HR-3, tab 18). This memo is particularly telling as to how the attitude of Dr. Laubitz had developed towards Dr. Grover's position at NRC. In this memo, he suggests that Dr. Grover had been assigned to the director's office because of a problem between himself and Dr. Robertson. This statement is simply not borne out by the evidence. Although Dr. Grover had disagreements with Dr. Robertson which eventually resulted in Dr. Robertson being removed as section head, it is clear from the evidence that Dr. Robertson had run ins with other scientists, including Dr. Cowan.

With respect to the balance of the memo, it is clearly a directive that the only choices left to Dr. Grover at this point, were for



a minimal project in holography and working in conjunction with Dr. Powell's optical engineering group. This project would be, according to the memo, a minor project which might have some expansion possibilities. The alternative would be to join the Photometry and Radiometry Section to participate in their programmes. These were projects as now approved. It is obvious from this memo that Dr.

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Laubitz had decided to hamper and interfere with Dr. Grover's research activities and reduce him as best he could to an insignificant role within the expanding field of optics and to keep him under his direct control, while being assigned to the Director's Office.

Further, it is apparent from this memo, that by April 1987 Dr. Laubitz had systematically stripped Dr. Grover of the former esteem and prestige held with NOI, reduced his research activities, dismantled his research team, put his budget on hold and left his future with NRC in a position of distressing uncertainty.

Dr. Laubitz in his memo decided the expenditures required for Dr. Grover's proposals as being too expansive and beyond budget. The fact of the matter is that Dr. Laubitz misinterpreted Dr. Grover's budget requirements, calculated the budget numbers for one year, as opposed to spreading them over a five year plan, as was actually proposed by Dr. Grover. Dr. Laubitz in his testimony admitted misinterpreting the numbers, and did not discover his mistake until a few days before he gave his evidence at this hearing. He confirmed to the members of this Tribunal that he paid little, if any, attention to the two separate proposals prepared by Dr. Grover in 1987 and indeed we find that these requests for proposals were nothing more than an exercise in futility as far as Dr. Grover was concerned. (See Volume 7, p. 1207 and p. 1213). Dr. Laubitz had no intention of ever acceding to anything Dr. Grover proposed, nor was he particularly interested in the content of the proposals. He endeavoured to criticize the contents of the proposals by suggesting that it was vague and lacking in the detail he required. There was no evidence submitted as to what Dr. Laubitz wanted in these proposals and indeed he had them critiqued by Dr. Bedford who had no particular expertise in the areas of Dr. Grover's sphere of activity, a fact which Dr. Bedford readily admitted. (See Volume 24, p. 445, 1.8).

As it was seen at the time of Dr. Grover's termination in 1990, the management approach employed by Dr. Laubitz and subsequently by Dr. Peron and Dr. Vanier, of having Dr. Grover prepare a proposal, was simply a method of putting him to the time and effort of preparing a document which was doomed for failure. The proposal was then utilized by management as an example of the inadequacies of Dr. Grover's research abilities, lack of understanding of NRC research programmes and sundry other failings on his part.

The Tribunal finds that this treatment of Dr. Grover by NRC management in employing this proposal exercise was nothing more than a ploy which was unfair, manipulative and calculated to frustrate Dr. Grover's career development.

In a memo dated April 6, 1987 (found at Exhibit HR-3, Tab 17), Dr. Grover had attached an activity report to this memo which was given to Dr. Laubitz. They had a meeting on April 14th, 1987. Dr. Grover testified that he attempted to discuss with Laubitz his

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activity report, as he wanted to demonstrate to him how actively he had been involved in the activities of the division of physics at NRC. Dr. Grover indicated that Laubitz threw the copies of the activity report back at him in his face and advised him as follows: "I am not interested in your past. If you want to stay here, you prove yourself to me one more time."

Dr. Grover also spoke with Dr. Laubitz about being asked by Dr. Powell to join his section. All Dr. Laubitz did in response to this question was to ask him what was wrong in joining such a section. (See Volume 3, p. 266, ll. 13-14).

In March, Dr. Grover received an invitation to attend an international workshop on holography and speckle phenomena during the period of December 1988. This workshop was to be held at the Indian Institute of Technology in Madras, India. All of the expenses, save and except the plane ticket were to be borne by the Indian Institute of Technology. His request for travel was turned down by Dr. Laubitz. In addition, Dr. Grover had received an application for a research position by an Israeli scientist named Dr. Monashe Okum. It was not uncommon for Dr. Grover to have visiting scientists work with him on research projects, and in fact this had been the norm for most of the years he had been with NRC.

This request was rejected and turned down without explanation by Dr. Laubitz. Prior to Dr. Laubitz becoming the director of the division of physics, Dr. Grover had received approximately five requests for visiting scientists to work with him, and he took two of them under his supervision. (See Volume 3, p. 268, ll. 23-24).

Following Dr. Laubitz' appointment as director, Dr. Grover had received approximately seven requests for visiting scientists.

Although he requested permission for only those scientists to come to NRC who were being supported by their institution for finances, he was unsuccessful in obtaining permission for these requests. (See Volume 3, p. 270-272.)

As a result of the April 14, 1987 meeting, Dr. Grover decided to escalate his treatment by Dr. Laubitz to senior management. He spoke with Dr. Gingras, a vice-president at NRC and the person closely associated with the programme at NOI. Dr. Gingras arranged a meeting to be set up with the vice-president of the division of physics, Dr. Clive Willis. By reason of the distasteful climate created by Dr. Laubitz, Dr. Grover was advised to take a medical leave of absence for a few weeks. Upon his return, he was advised that a meeting was arranged between Dr. Laubitz and himself with Dr. Willis.

This

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meeting was scheduled for June 10th, 1987.

Dr. Grover testified that at the meeting with Dr. Willis, he outlined all of the contents of his meeting with Dr. Laubitz of April 14th. He also told Dr. Willis that he felt Dr. Laubitz was discriminating against him. He recalls Dr. Laubitz as being quiet and somewhat unresponsive to this general conversation. Dr. Grover specifically recalls Dr. Laubitz repeatedly muttered the following: "Now, you are really making me angry. I have to do something about you."

When questioned as to whether or not he had made these remarks to Dr. Grover, the evidence of Dr. Laubitz was to the effect that he did not recall. His evidence is found at Volume 10, at p. 1391:

"Q. During the course of the meeting, did you ever say, in relation to Dr. Grover, "Now you are making me really angry, I've got to do something to do"?"

A. I cannot recall saying anything like that.

THE CHAIRMAN: Are you saying that you didn't say that or you just can't recall?

THE WITNESS: Strictly speaking, I cannot recall, Mr. Chairman."

Two additional events occurred in the year 1987, both of which confirmed to this Tribunal that Dr. Laubitz' treatment of Dr. Grover albeit subtle, was deliberately designed to reduce Dr. Grover's status with NRC.

On April 28th, 1987, Dr. Laubitz received a letter from Dr. George Fraser requesting the appointment of a liaison officer on the project "Computerized Liquid Crystal Display Signs" as submitted by Xtalite Technology Limited. It was pointed out in this letter, (which is found at Exhibit HR-3, Tab 21), that Dr. Grover had in fact done the original assessment of this project.

Dr. Vanier requested that Dr. Grover follow up on the request of Dr. Fraser. The work involved would be for Dr. Grover to travel to Prince Edward Island to review the project.

Dr. Grover wrote to Dr. Laubitz on July 21st despite the fact that Dr. Fraser had actually put in a request in April. The trip to P.E.I. was being paid by IRAP and none of the travelling time for Dr. Grover's work would have been an expense to NRC.

Dr. Laubitz was cross-examined as to why he took no action which would have resulted in Dr. Grover being appointed to the IRAP project. Dr. Laubitz acknowledged at volume 12, p. 1673 that he had declined to take any action on Grover's behalf because Grover had filed a grievance. At volume 12, p. 1674, he testified that his decision was that Dr. Grover would not be a proper representative because he did not appreciate the direction of the division, and he would not make a suitable ambassador to the Xtalite Technology Company on behalf of the Division of Physics.

In effect, Dr. Laubitz was saying that because Dr. Grover had a philosophical difference with him, and because he filed a

grievance, Dr. Grover would not make a proper representative, and therefore no action was taken.

Dr. Laubitz' actions in frustrating Dr. Grover's

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involvement in the IRAP project again confirmed to this Tribunal that the abuse of his position of authority occurred intentionally to diminish Dr. Grover's stature and frustrate his career development.

The second additional incident which occurred in the summer of 1987 again, at the hand of Dr. Laubitz was a press release relating to a conference in optics in Quebec City. The original draft press release (found at Exhibit HR-3, tab 20, p. A), quotes a passage by Dr. Grover. This original draft release prepared by a Patricia Montreuil of the Public Affairs Division of NRC, was submitted to Dr. Grover for his approval. Dr. Grover had an extensive telephone exchange with Ms. Montreuil in order to provide her with the information for the upcoming conference. Dr. Grover was on the organizing committee of this conference. At P. 21B, Dr. Grover made certain corrections at the request of Ms. Montreuil. The final draft however, which is shown at p. 21C had a paragraph deleted which was the only paragraph referring to Dr. Grover, as representing NRC on the organizing committee for the I.C.O. congress. The person responsible for the deletion was Dr. Laubitz, and again the Tribunal finds this another clear example of Dr. Laubitz' obvious attempt to diminish the importance of Dr. Grover amongst his peers. The conference in Quebec City was an important conference for Dr. Grover and he was intricately involved in its organization. The action of Dr. Laubitz we find was deliberate, abusive and discriminating.

Dr. Laubitz testified that his reason for deleting the reference to Dr. Grover was that his own style of press release did not allow for mention of individuals. The examples, however, of other press releases referred to in these proceedings often included reference to an organizer along with statements of that person. This Tribunal finds as a fact that Dr. Laubitz' evidence in this matter was not truthful.

During July of 1987, Dr. Grover filed a grievance (which is found at HR-4, p. 1). This grievance is dated July 15, 1987. In this grievance, Dr. Grover complains of the abuse of management,

isolating him, abolishing his programmes without consultation, and downgrading his status at NRC. He requested that his optics programme be reinstated and that he be recognized again as a group leader. It is of importance to note that the first level of grievance response is heard by the director of the division, which in this case was Dr. Laubitz. The ridiculous irony of course is that the person against whom the complaints are made is one and the same person that rules on the merit of the grievance. Dr. Grover testified that his union did however request that the first level response be waived and this was refused by NRC management. Dr. Laubitz testified that he felt it was his duty to respond to this grievance, even though he conceded that he could have waived a response, in view of the fact that the main complaints were about his conduct towards Dr. Grover.

In any event, this grievance was escalated beyond the first level response and the contents of the second and final level response is found at R-4 p. 2. Reference has already been made to

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part of this grievance by Dr. Leddy, which details various events that led up to the grievance as well as the mismanagement of handling same. The grievance however in its conclusion dismissed Dr. Grover's complaints.

Dr. Laubitz' response at the first level, had directed that Dr. Grover join the Photometry and Radiometry Section and so Dr. Grover wrote a memo to Dr. Laubitz on September 2nd, 1987 requesting that he be given an operations budget of \$10,000 with immediate effect. He further informed Dr. Laubitz that he was going to join the Photometry and Radiometry Section.

The second level grievance was heard in October 1987, following the decision of Dr. Leddy, and Dr. Grover was requested to see Dr. Vanier. Dr. Vanier proposed to give Dr. Grover some additional research activity. He gave to Dr. Grover certain additional lab space, but only a portion of it with any exclusive use. Dr. Grover had requested a summer student, but none was forthcoming, and such was the case in the years 1988 and 1989. He had additionally requested that he be permitted to attend a scientific conference in Birmingham, England in March of 1988, and this was disallowed despite the fact that it had been originally approved by Dr. Vanier. For some reason, Dr. Vanier changed his mind. The best that Dr. Vanier could do for Dr. Grover was to

suggest that he submit a post-deadline paper to the conference organizers. Dr. Grover advised Dr. Vanier that it was not possible at this late time to make a submission of that kind.

In this meeting with Dr. Grover, Dr. Vanier, suggested that in order for Dr. Grover to be fully reintegrated into the division, he should withdraw any and all complaints about the division. It should be noted at this point that the divisional management referred to by Dr. Leddy in his grievance report, included Dr. Laubitz, Dr. Preston-Thomas and Dr. Vanier. In addition to filing a grievance, Dr. Grover in July of 1987 spoke with a Human Rights Officer at the Canadian Human Rights Commission Office. At this point, he still had not had any results from his meeting with Dr. Willis and Dr. Laubitz. Dr. Grover testified that the Human Rights Officer listened to him, and advised him to endeavour to exhaust his internal remedies through the grievance procedure. Dr. Grover in turn spoke with his union, and the representative advised him then that his concerns regarding the treatment were mainly Human Rights issues. He was also advised that there was a Human Rights Advisor at NRC and he was therefore directed to see one Lorraine Collette. The Complainant met with her in July of 1987. The meeting with Ms. Collette raised concerns for this Tribunal which remain unanswered at the conclusion of the evidence.

Ms. Collette was not called as a witness in this proceeding. The concern expressed by this Tribunal arises from the manner in which her role as a Human Rights Advisor puts a complainant in jeopardy in the event of further proceedings. In this particular case, Dr. Grover saw Ms. Collette in July 1987, at her office in building M58 at NRC. This is the same building in which NRC management is located. Ms. Collette advised Dr. Grover that her room had been

soundproofed for privacy, and assured him anything he discussed with her was strictly confidential. Dr. Grover then proceeded in a very lengthy meeting to describe in great detail his problems with Dr. Preston-Thomas and Dr. Laubitz. She advised Dr. Grover that if he signed a complaint, she would make certain recommendations to Dr. Pottie, the executive vice-president of NRC to correct the situation. She further advised Dr. Grover that even though there could be some corrections, such as suspending Dr. Laubitz for a period of two weeks, there was nothing that could be done by way of compensation. Obviously, Dr. Grover was discouraged in proceeding any further with this matter.

It is of further concern to this Tribunal, that there was introduced into evidence as Exhibit HR-3, tab 30 the following bulletin from Sphere Magazine, an NRC publication. This publication dated July/August 1989, contained an article by Ms. Collette outlining NRC's policy on harassment and abuse of authority, which occurs when a supervisor interferes with or adversely influences the career of another employee. She describes that this could include intimidation, threats or coercion, and it can apply to the distribution of work assignments, training opportunities, promotional opportunities, performance evaluations or the provision of references. The balance of this article sets out in detail the nature and method by which a person can file a complaint and examples of discrimination in the workplace. The article concludes with her name and title "Advisor, Human Rights" with her phone number.

Further introduced into evidence as Exhibit HR-3, tab 23 is a letter in response to the complaint of Dr. Grover dated January 25, 1988. This letter indicates that Lorraine C. Collette "will be representing the National Research Council in this investigation".

This Tribunal finds Ms. Collette's role in these proceedings one of conflict and prejudice as it relates to the fairness of treating Dr. Grover's complaints with the confidence they deserved. After receiving in confidence Dr. Grover's entire story about the complaints of his treatment by Dr. Laubitz and others, Ms. Collette then turns about and becomes the representative of National Research Council throughout these complaints and the subsequent hearing. This Tribunal finds her role in this entire matter inappropriate and prejudicial to the fairness and even treatment of Dr. Grover's complaints which included the original complaint in 1987, as well as the two amended complaints. Several of the witnesses that testified on behalf of NRC, including Dr. Laubitz, Dr. Preston-Thomas and Dr. Willis refer to having counselling sessions with Ms. Collette regarding Dr. Grover's complaints, in preparation for this hearing.

In the Fall of 1987, Dr. Grover had a number of discussions with Dr. Vanier regarding his ongoing research.

Initially, Dr. Vanier appeared to be encouraging regarding Dr. Grover's research prospects, but Dr. Grover soon found that Dr. Vanier was not really interested in expanding in any way his projects within the Photometry and Radiometry Section. Indeed, in



a memorandum dated November 26th, 1987 (found at Annex 4, tab 24 HR-3), he clearly places restrictions on the research projects of Dr. Grover. In this exhibit, there is no mention of his budget for the next fiscal year. As previously noted, in addition to the restriction of research projects, Dr. Vanier proceeded to cancel a scientific conference in Birmingham, England, which Dr. Grover was to attend and had previously been given his provisional approval. Dr. Vanier was unable to satisfactorily explain how he came to cancel this trip.

In September of 1988, Dr. Grover received an invitation from Dr. Matsuda of Japan, to enter into a joint agreement on science and technology. Dr. Grover gave Dr. Matsuda's proposal, (which is found at HR-3 Tab 26), to Dr. Bedford and indicated quite clearly to Dr. Bedford, that this was an important collaborative project, and he requested funds for this activity. Part of the funding was for Dr. Grover to travel to Japan to review Dr. Matsuda's laboratories in Japan. Neither the collaborative programme nor the travelling were ever approved by Dr. Bedford or any person in higher authority. It should be noted that Dr. Matsuda's collaborative project involved development of new optical information processing systems. Further it involved the use of liquid crystals applied in processing applications, which was an area of Dr. Grover's expertise.

At or about the same time, this joint collaborative programme was turned down, Dr. Grover learned that NRC had in fact expanded the area of opto-electronics and indeed formed a new section. He was neither consulted about this expansion, nor was he asked to participate in any way. The new section was set up under Dr. Normandin and he was made a section head. He was a junior scientist to Dr. Grover. In addition to the creating of a new section, NRC became involved in a consortium which involved a national collaboration with industry. This involved multi million dollar funding, and Dr. Laubitz was primarily involved in handling this consortium project. Dr. Grover was never at any time allowed to be involved, in any way, whether by way of collaboration, consultation or discussion in this consortium project.

Dr. Grover throughout 1988 was endeavouring to go ahead with his research activities. He encountered considerable difficulty in the purchase of a piece of equipment. Delays and change in approval encountered by Dr. Grover were difficult to

understand. Within his budget for the fiscal year 1988-89, he obtained approval of certain equipment. In October 1988 he was finally advised to go ahead with the purchase, but then learned Dr. Vanier had put a stop to the purchase. The requisition was after much delay finally cleared in January 1989.

In early March of 1989, Dr. Grover learned that his activities had again been cut back by way of budget restrictions.

Despite the various proposals prepared by Dr. Grover outlining the proposed holography activity, we find that as of March 23rd, 1989, Dr. Bedford was disallowing in total the support for holography activity. His reason given were that the description of same was without impact, progress, goal, project description or the

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anticipated output. The Tribunal has read the various proposals in this area prepared by Dr. Grover. We find Dr. Bedford's memo of March 23rd, 1989 difficult to understand as it relates to holography activities. We infer however that he had been directed by someone in senior management to again restrict the activities of Dr. Grover. By March of 1989, Dr. Grover's funded research activity had been restricted to sensitometry which represented approximately ten percent of his research work. The result of research restrictions lead in Dr. Grover's testimony to cutting down his publication record. The impact on his professional career has been substantial. It is obvious to this Tribunal from the testimony of Dr. Cowan that a scientist's level of status, prestige and indeed progress in this field is directly related to his ability to publish reports, texts and research papers along with participating and attending research conferences.

The Tribunal finds that from the early part of 1986, when Dr. Grover returned full time to NRC, through to 1990 his research activity and funding for same was narrowed and systematically restricted by NRC management. The effects upon the development of his career by reason of their actions were obvious and devastating.

A great deal of evidence in this hearing was led with respect to the miscalculation of Dr. Grover's years of relevant experience (YRE), and the systematic pattern of progressively poor promotion submissions. The Tribunal was assisted substantially by the evidence of Sally Deihl, a research officer with NRC employed by the research section. Her primary work involved research into

supportive collective negotiations and issues affecting pay and compensation. Dr. Grover was a member of the bargaining unit she did research on. She prepared the charts, tables and graphs contained in Exhibit C-3.

Ms. Deihl testified that when Dr. Grover was hired at NRC, he was credited with fourteen years of YRE, which was a combination of work experience and education. The equivalent salary for fourteen YRE at that time was \$34,415. Immediately after being hired, there was a contract negotiation which resulted in a salary increase. She describes salary increases as those contractually negotiated, as well as those represented by promotion submissions which fall into various categories. Category 4 is a designation that a person is moving faster than the average rate, and at an above average performance. Dr. Grover was in category 4 approximately one year after joining NRC.

After a year and a half of an accelerated promotion, Dr. Grover was promoted to a senior research category with a salary of \$52,129. At that point, however, with the exception of one additional movement, all changes in his salary were as a result of economic increases negotiated for every person as opposed to promotion increases by way of accelerated promotion.

Ms. Deihl testified that Dr. Grover had not since January 1st, 1987 received any promotion other than normal incremental increases.

She also prepared a chart with respect to YRE, along with a chart showing the salary progression found at Exhibit C-3-c. Ms.

Deihl testified that with increases in YRE, there ought to have been for Dr. Grover, a natural progression in his base salary increases. Exhibit C-3-c indicates a levelling off of Dr. Grover's salary increases as of December 1988. Ms. Deihl's evidence graphically illustrates that had Dr. Grover progressed on even a normal scale after 1984, his salary increases by the date of this hearing ought to have been substantially more, particularly when one considers the increment of additional YRE apparently given to him in 1986, without notifying him of same. The Tribunal can only conclude that Dr. Grover has been inappropriately dealt with both through promotion submission and incremental salary increases.

With respect to promotion submissions, the evidence clearly indicates a systematic progressive reduction in both the detail and quality of the submission that was

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put forward by management on Dr. Grover's behalf. Various promotion submissions and documentation relating to same are contained in Exhibit HR-2, tab 2.

In the early years of Dr. Grover's career, at least up until 1985, Dr. Grover's promotion submissions were put forward by Dr. Wyszecski, after consultation with Dr. Grover. This practice of discussing a possible promotion submission with the candidate, in order to ensure all relevant information is put forward on the candidate's behalf, is a practice not uniformly followed by the various section heads. In the opinion of the Tribunal, this practice which has since been reversed at NRC encouraged subtle discrimination that is covert and systemic.

Dr. Willis testified that he has for some years endeavoured to persuade NRC management to take a different approach with career assessment without success.

A review of the various promotion submissions confirms again to this Tribunal, a systematic approach by NRC management, and in particular Dr. Laubitz and Dr. Preston-Thomas, to diminish Dr. Grover's stature and to ensure the disruption of his career progression. Starting in 1982, approximately one year after joining NRC, Dr. Wyszecski put forward the following promotion submission:

"Dr. Grover joined the Optics Section about a year ago, already recognized as an experienced and successful research worker in electro-optics. Our expectation that he would strengthen and possibly expand our research activities in optics are being gratifyingly fulfilled. Grover demonstrates clearly superior knowledge and expertise in a large variety of optical fields.

He has taken the initiative in rebuilding our optics facilities in order to accommodate a new optics programme emphasizing electro-optics. Grover's initial studies deal with holography, interference phenomena in diffused light and optical image processing. He has also begun to investigate the electro-hydrodynamic instabilities in nematic liquid crystal prisms.

Grover is a forceful research worker, well organized and willing to cooperate with others inside our laboratory as well as outside notably with the opticians of Laval University. He is clearly SRO calibre and should be accelerated into that grade."

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The 1984 promotion submission is contained at HR-3, tab 2-14. Excerpts from that submission put forth by Dr. Wyzecki in consultation with Dr. Grover again clearly indicate the rising career progression of Dr. Grover. The following are comments from that submission:

"Grover joined NRC in 1981 and quickly became our leading expert in modern optics, particularly in the important and rapidly developing field of electro-optics, holography, optical sensors, integrated optical devices. His research work has brought him national as well as international recognition, especially with his pioneering contributions in "white-light holography".....

Grover has demonstrated his superior performance on a background of remarkable in-depth and broadly based knowledge in optics....

He is clearly an outstanding research scientist with excellent prospects of reaching ultimately the P.R.O. level..

In recognition of Grover's demonstrated accomplishments, it is recommended that he be promoted to the S.R.O. grade in a period of time shorter than the dwell period for the average staff member: 18 months instead of 24."

The background material providing a detailed assessment of Dr. Grover for the 1984 submission, places his various qualifications at a range of excellent, and very good to good. His quality of research and problem solving, level and extent of scientific knowledge and planning ability were all in the excellent category.

It is clear to this Tribunal that Dr. Wyzecki as well as Dr. Cowan, had a far different assessment of Dr. Grover's abilities from those held by Dr. Laubitz, Dr. Preston-Thomas and Dr. Vanier. Cowan testified that the late Dr. Wyzecki, an internationally renowned scientist, was indeed a very keen judge of scientific ability and character, and had assisted the career of many other young scientists. He obviously considered Grover an above average scientist, a fact which

Dr. Laubitz and Dr. Preston-Thomas refused to concede during their testimony. The best that they could attest to was that Dr. Grover was possibly a "good" scientist. It is not hard to see, therefore, because of the opinion of Dr. Grover felt by these men in NRC management, that the Complainant's 1986 promotion was radically different than the 1982 and 1984 promotions. As previously indicated, Dr. Grover's full time return to NRC brought him under the management of Dr. Laubitz, assisted by Dr. Preston-Thomas. The evidence of Dr. Laubitz was to the effect that he had removed Dr. Robertson as a section head in 1986, because of difficulties in his management style, and in particular the problems Dr. Robertson had in dealing with Dr. Grover and Dr. Cowan. Dr. Laubitz further testified that one of the main reasons for transferring Dr. Grover into the director's office as of January 1987 was to separate him from Dr. Robertson. Despite these concerns, Dr. Robertson was responsible for preparing the initial promotion submission material for Dr. Grover in 1986. His initial comments are found at Exhibit R37, p. 229 wherein he describes in a memorandum to Dr. J. Vanier dated 2 September 1986 the following description of Dr. Grover:

"Dr. Chander Grover has been a member of the Photometry and Radiometry Section since 1981. He is our leading expert in modern optics (holography, interferometry, fibre-optic sensors and electro-optical materials). He is an unusually productive scientist who should have no difficulty in reaching the top of the senior research officer grade."

He then concludes:

"In view of his continuing contributions, I recommend that Dr. Grover be promoted to the next level of the senior research officer grade."

In volume 11, p. 1638, Dr. Laubitz testified that Dr. Preston-Thomas changed the promotion submission of Dr. Robertson in significant aspects. Instead of the wording of Dr. Robertson's preliminary submission:

"He is our leading expert in modern optics."

Dr. Preston-Thomas varied this to read:

"He is an expert in modern optics."

Again, Dr. Robertson concludes:

"He is an unusually productive scientist who should have no difficulty in reaching the top of the senior research officer grade."

Dr. Preston-Thomas varied this language to read:

"Grover is a productive scientist who should reach the top of the senior officer grade".

It is obvious to this Tribunal that the variation by

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Preston-Thomas from "leading expert", "unusually productive" and "no difficulty" was a calculated, totally unnecessary interference of an otherwise fair description of Dr. Grover's abilities and status. Dr. Preston-Thomas' explanation of these various changes (obtained in Volume 18, p. 3127) is simply not accepted by this Tribunal.

Ironically, by the time we arrive at Dr. Grover's 1988 promotion submission, the opening remarks are totally devoid of any descriptive language of Dr. Grover's capabilities. These remarks commence: "during the past two years Dr. Grover's research activities have been interrupted by organizational changes within the Division of Physics".

The only recommendation given in 1988, was based upon his long-term record which was a recommendation for promotion of one step to the SRO grade as of January 1989.

The Tribunal concludes after a review of the documentation regarding promotion submissions from 1982 through to 1989 coupled with the evidence of Drs. Vanier, Laubitz, Preston-Thomas and Bedford, that the change after 1986 to the promotion submissions of Dr. Grover were deliberate and intended to depict Dr. Grover as a less than average scientist. The result of the changes was to bring his promotion progression to an abrupt halt.

Dealing with the 1988 promotion submission of Dr. Grover, this Tribunal would observe that the evidence as to its preparation and handling could best be described as bizarre.

In January 1989, Dr. Grover had certain meetings with his section head, Dr. Bedford, regarding promotion. These meetings apparently took place on January 6th and January 9th, at which times Dr. Grover expressed concern about the lack of particulars with respect to his denied promotion. He emphasized at that time that neither Dr. Bedford his section head, nor Dr. Preston-Thomas, had requested any input from him as to his academic achievements, research or relevant data to assess his performance. Apparently there were in addition the questions about promotion and general discussion about the concerns of harassment as part of the background material to the complaints herein. It should be noted that in the same month the president of NRC, Dr. L. Kerwin was notified under letter of January 19th, that the Canadian Human Rights Commission had decided to pursue an inquiry into the complaints of Dr. Grover. In a memo to Dr. Bedford, an outline of the concerns of Dr. Grover were set out in detail. This memo was followed up by a further memo dated February 1st, 1989. (These memos are found at HR-38 pp. 39 and 422 respectively.) In all, Dr. Grover forwarded to Dr. Bedford three separate memos in the month of January. Suffice it to say that the question of particulars of his failure to receive a promotion were clearly raised with Dr. Bedford, and Dr. Bedford undertook to find out factually why the promotion submission was not approved. He responded to Dr. Grover's memorandum in detail by memorandum dated February 10th, 1989 (found at R-38 p. 436). In Dr. Bedford's memorandum of February 10th, 1989 he indicates that he had recommended that Dr. Grover be given a salary increment as of January

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1989. The directors had agreed to put forward a promotion case. He agrees that certain material he prepared was probably "modified" by Dr. Preston-Thomas, so that it conformed to management requirements. As previously indicated, modifications by Dr. Preston-Thomas were in the opinion of this Tribunal designed to minimize Dr. Grover's promotional possibilities and to frustrate same.

It is to be concluded that Dr. Bedford was not provided any information from Dr. Preston-Thomas nor Dr. Laubitz as to why the promotion submission was turned down.

On the same date as Dr. Bedford's memorandum of February 10th, 1989 there appears a memorandum prepared by Jill Baker, the divisional administrative officer explaining the promotional procedure within NRC, which was in answer to a request by Dr. Bedford.



On March 21st, 1989, Dr. Grover requested by memo to Dr. Bedford, a copy of all the material he had prepared and submitted to the directors for the purpose of the salary increment promotion. On April 10th, 1989, Dr. Bedford replied by memorandum that he "did not have a copy of the draft material" that he had submitted to the directors in connection with the salary increment, nor the final submission that went to the promotion board. Dr. Grover replied by memorandum dated April 21st, that he would appreciate if Dr. Bedford could obtain the files containing the material, as he was aware that such material "is stored and retained in the section's word processor". In the alternative, he suggested that Dr. Bedford obtain a copy from the secretary of the section's electronic records. Dr. Bedford replied by memorandum dated May 2nd, 1989 which stated inter alia the following:

"I do not have a copy of this material nor has it been retained on the Sectional Word Processor. I have inquired of the directors who also have no copy of my draft material. The divisional administrative officer (underlining is that of the Tribunal) informs that a copy of the promotion case is placed on an employee's staff file. In such case, you can if you wish, see there the promotion case that was submitted by the Division to the promotion board."

It should be noted that reference to the divisional administrative officer is to Jill Baker.

Against the background of these various documents and memoranda, we heard evidence which troubled the Tribunal, about the Respondent NRC's handling of Dr. Grover's promotion and indeed confirmed findings regarding deferential treatment of Dr. Grover. Dr. Grover testified that in January of 1989, he was in the office of one Gloria Dumoulin, the secretary of the Photometry and Radiometry Section. At that time, he noticed on the screen of her word processor certain words in reference to himself, namely "promotion for C.P. Grover". Dr. Grover requested of Ms. Dumoulin a copy of the recommendation, and he was told by her that he would have to get permission from Dr. Bedford before a copy could be made. Dr. Grover requested of Dr.

Bedford the material for his promotion submission, and what followed was the exchange of memorandum hereinbefore referred to.

The essence of this exchange of memorandum was of course that Dr. Bedford did not have the promotion submission, and it was not on the word processor nor was it available from Dr. Laubitz or Dr. Preston-Thomas, but it could be in Dr. Grover's personnel file.

Ray Fink, a technician who worked with Dr. Grover on some of his research, was with Dr. Grover when he saw the material on the screen of Ms. Dumoulin's word processor. Ray Fink was not called to testify in this proceeding. Dr. Grover further testified that in early May, he was advised by Ms. Dumoulin that she had removed the material from her word processor. She further testified that the administrative officer Jill Baker had called her to her office and told her to surrender the computer diskette which contained the promotion information.

It is important in understanding this evidence to note that the memorandum of May 2nd of Dr. Bedford to Dr. Grover had already been received, before Ms. Dumoulin was requested to surrender the diskette. Gloria Dumoulin testified and her evidence was most unsatisfactory. She was under subpoena by Mr. Bennett, counsel for Dr. Grover. Her evidence was evasive, contradictory and only led further to the bizarre aspect of this incident. She testified that she was a secretary for Drs. Bedford and Embleton.

She advised that she recalled Dr. Grover being in her office and looking at her word processor. She could not remember the month that this occurred. She testified that subsequently she was asked to transfer the promotion case she had typed on her word processor to a diskette, and hand it over to Mrs. Jill Baker.

Although she could not remember when she was requested to do this, she was quite clear that it was Jill Baker and that it occurred in 1989. She testified that when Dr. Grover subsequently asked her for a copy of the promotion submission, she then told him she no longer had it but that it was in the possession of Mrs. Baker. She said she hand delivered it to Mrs. Baker in her office. She further testified that she saw Mrs. Baker take the diskette and put it in her safe. When asked if she could ever remember complying with such a request before, she could not remember.

In connection with this same incident, Ms. Dumoulin was asked to recall the meeting when she took the diskette to Jill Baker's office which involved Lorraine Collette, the Human Rights adviser. Ms. Dumoulin became very defensive when asked about the

presence of Lorraine Collette, and in her examination by Mr. Bennett she denied such a meeting. Mr. Bennett had interviewed Ms. Dumoulin at her home and had present with him a law student, one Clare Barcik. Mr. Bennett had put to Ms. Dumoulin during the interview a statement, that she purportedly advised Dr. Grover of, regarding the meeting of Ms. Baker and Lorraine Collette.

The nature of this statement was that when Ms. Dumoulin took the diskette to the office of Ms. Baker, Ms. Collette was present and made the following statement:

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"You can go join Grover in his cause and management can throw both of you out at the same time."

Clare Barcik testified as to the content of the meeting with Ms. Dumoulin at her home. Ms. Barcik gave her evidence in a candid and straightforward manner and the Tribunal was impressed with the clarity of same. Ms. Barcik testified that Dumoulin told her that she was afraid to testify because she would have to testify against her superiors, and she was quite frightened about her job security. We should note that from the demeanour of Ms. Dumoulin in the witness box, her fear of recrimination by her employer was obvious despite the assurances by members of the Tribunal, that she should divulge her evidence truthfully and should not be in fear of discipline by her employer. She also advised Ms. Barcik and Mr. Bennett that she was afraid that she would not be receiving any further promotions as a result of her testimony. She was most concerned about testifying against Jill Baker as it related to her own job security.

Ms. Barcik reviewed the content of the discussion as it related to the meeting with Ms. Dumoulin, Lorraine Collette and Ms. Baker. Ms. Barcik testified that Ms. Dumoulin at first did not recall the statement, but then when asked again, she advised that whatever Lorraine Collette had said to her in the office at that time was between herself and Lorraine Collette and that she was very nervous about saying anything against her superiors at the Tribunal hearing.

Jill Baker testified at the request of this Tribunal in view of this unusual evidence of Ms. Dumoulin. Up to this point of the hearing, Ms. Baker had been assisting counsel, Mr. Donohue in the preparation of the Respondent's case. Her involvement and

status before the Tribunal was terminated by the Respondent after her testimony. The Tribunal found her evidence to be totally unreliable.

She testified that she received a call from Ms. Dumoulin some time in April or May of 1989. Dumoulin was apparently in great distress and advised her that Dr. Grover had seen his promotion submission on the screen that she had typed in January of 1989. Ms. Baker testified Ms. Dumoulin was in quite a state and Ms. Baker instructed her to go and tell Dr. Bedford.

She then advised that Ms. Dumoulin requested that she come up to see Ms. Baker, and Ms. Baker acceded to her request. She testified that Ms. Dumoulin was very worried about Dr. Grover, and that Ms. Dumoulin appeared to be going into a mild state of hysteria.

When asked about Ms. Dumoulin's statement that she had been requested by Ms. Baker to take the tape to her, Ms. Baker advised the Tribunal that same was completely untrue. The promotion material she said that she took from Ms. Dumoulin had already been placed on Dr. Grover's staff file. She explained that the original material for the promotion submission would contain approximately three pages, which is the background material taken to produce the first two pages of the promotion

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submission. She indicated that Exhibit R-11, pp. 1 and 2 would be on Dr. Grover's staff file.

Ms. Baker testified that when she observed Ms. Dumoulin in an upset state, she made the following statement to her:

"Look Gloria, if it's really bothering you that much, why don't you put it on a diskette, give it to me, and I'll throw it in a drawer until the boys sort out their problems."

The reference to "the boys" was apparently to Dr. Grover and Dr. Bedford and possibly Dr. Laubitz and Dr. Preston-Thomas. This testimony from Ms. Baker did not coincide nor bear out the statements made by Dr. Bedford in his memos hereinbefore referred to. Jill Baker had the information Dr. Grover was requesting some time before Dr. Bedford requested of her

particulars of the submission material. She further testified that she did not put the diskette in a safe, but in a small filing cabinet and advised Ms. Dumoulin that she could have it back when things got sorted out. She denied that Lorraine Collette was ever present when Ms. Dumoulin was in her office.

In this regard, she testified during the following exchange as follows (at Volume 6, p. 702):

"THE CHAIRMAN: Was there a time when Lorraine Collette was present?

THE WITNESS: No. Lorraine is in another building. She would have no reason to be present for this sort of thing that was purely a Divisional matter. It was sort of a keep Gloria quiet campaign." (the reference to "Gloria" was Gloria Dumoulin).

When asked what the "keep Gloria quiet campaign" was, she testified that it was because she got excited and emotional and it was not good for her health. When pressed about the keep quiet campaign, the following exchange between Baker and Ms. Goldhar, Tribunal member, is contained at p. 703:

"MS. GOLDHAR: The keep quiet campaign. I am wondering who the campaign was for?

THE WITNESS: No, no. I shouldn't have said that. It was rather a loose way of describing it but when Gloria gets excited we try to keep her calm. We tried to remove any problems from her."

Ms. Baker in her evidence, when pressed on the question from Tribunal members, could not give a satisfactory reason as to why Ms. Dumoulin should be in shock or be surprised that Dr. Grover had seen his submission and asked for a copy of it.

Indeed, she stated that Dr. Grover ought to have been able to obtain same through Dr. Bedford. She was asked why Dr. Grover could not have a copy, and she replied that it was Dr. Bedford's

document. She further testified that Gloria Dumoulin would have typed other promotion submissions with information left on her

screen. She was further asked if because the Human Rights case had started by letter of the Commission in January 1989, if this would make a difference to Ms. Dumoulin's reaction to Dr. Grover's request and Ms. Baker replied that perhaps she was super-sensitive to the issue.

Ms. Baker was then cross-examined on a very important aspect of credibility. At volume 6, p. 710, she testified that all Dr. Grover had to do was ask for his staff file in order to see the original promotion submissions. When she was referred to Exhibit C-1 and in particular the memorandum of April 21st, 1989 from Grover to Bedford, she denied that she had ever seen this memo. This evidence came despite the fact that she was intricately involved with preparing the Respondent's case for this hearing. She further denied that she had ever spoken to Dr. Bedford about this request by Dr. Grover for his promotion submission material. She further denied that she had spoken to Lorraine Collette about the evidence and memos surrounding the request by Dr. Grover. She was then asked about Dr. Bedford's memorandum of May 2nd, 1989 to Dr. Grover, wherein he stated that he did not have a copy of the material and had it been retained on the sectional word processor. When asked about how Dr. Bedford would know this fact, unless he had talked to either Baker or Dumoulin, she replied that she did not know where he got that information. She denied that Dr. Bedford had asked her about the word processor material and he was not aware of the diskette. The following exchange of Jill Baker's examination evidence then confirmed the type of deferential and discriminatory treatment Dr. Grover was receiving at the hands of the Respondent and this witness. This exchange is contained at Volume 6, p. 716 as follows:

"Q. And I presume that Gloria Dumoulin would be well aware of your position at the National Research Council?

A. Yes.

Q. And would you have us believe this morning that you did not ask her to give you that disk?

A. Yes.

Q. Have you ever asked a secretary to give you a copy of a disk?

A. No.

Q. Have you ever retained promotion submissions from another scientist?

A. In what form? I have copies of all promotions. I have copies of all promotions.

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THE CHAIRMAN: The diskette in your drawer.

WITNESS: No."

In questioning about why she had not advised Dr. Grover that his YRE had been adjusted in 1986, and further why he had only learned of it in 1989, when he looked at his personnel file, she advised the Tribunal that Dr. Grover ought to have been aware that she had done this. When pressed for clarification of how he would know unless he was notified by her, she said that he should have asked her and she would have told him. There was no explanation given by her to why she would treat Dr. Grover in this manner. Further there was really no plausible explanation given for the entire episode regarding the 1988-89 promotion submission and confiscation by her of the diskette of Gloria Dumoulin. This Tribunal simply cannot place any credibility in her evidence and finds her testimony for the main part untruthful.

Dr. Bedford was questioned as to what inquiries he had made of persons as to the location of his draft material on Dr. Grover's submission. He testified that he inquired of Dr. Preston-Thomas, Dr. Laubitz and Mrs. Baker if they had copies.

They all advised him that they did not have copies but at no time did Jill Baker advise Dr. Bedford that she had Dr. Grover's material on a diskette locked away in her desk. We can only conclude from all of the testimony in this incident Jill Baker, Dr. Laubitz and Dr. Preston-Thomas were concerned that Dr. Grover know that his original promotion case had been supported by Dr. Bedford, and that the ultimate promotion case which was altered by Dr. Preston-Thomas would in fact deny his promotion.

In June of 1989, Dr. Grover was elected as a Fellow to the Optical Society of America. This award is apparently reserved for only those members of the Society that are highly distinguished in the area of optic sciences. The number of

Fellows of the Society is apparently limited to approximately ten percent of the membership and the membership is comprised of several thousand members. Dr. Bedford was aware of Dr. Grover's appointment and indeed congratulated him for it. There was no report however of this distinguished appointment published in NRC's internal newspaper called The Sphere. A colleague of Dr. Grover's at NRC, one Dr. Paolo Cielo, was also appointed a Fellow of the Optical Society of America in September of 1989, and his picture appears in the magazine along with a write up regarding the prestigious aspect of this award. That write up is found at Exhibit HR-3, Tab 31. The Respondent's position is that not all awards are printed up in Sphere. The Tribunal finds this explanation pretextual.

Dr. Grover testified that prior to his full time return to the Department of Physics, under Dr. Laubitz in 1986, he was normally given the opportunity to work with visiting scientists and to have summer students assist him in his research. As previously outlined herein, this access to visiting scientists

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and summer students after 1986 was drastically reduced. In 1989, Dr. Grover had been denied services of a summer student and filed a grievance to the final level of hearing before Dr. Leddy. Dr. Leddy's response to the grievance is found at Exhibit R-38 p. 536 which he finds in favour of Dr. Grover's grievance and allows five person months for a summer student. The date of this grievance response is September 27th, 1989. Of all the grievances that were filed by Dr. Grover from 1986 through 1990, this is one of the few times in which Dr. Leddy found in favour of Dr. Grover. Unfortunately, despite the positive grievance ruling, Dr. Grover was then advised by Jill Baker that he would have to use five person months before the end of the fiscal year which was March 31st, 1990. This obviously frustrated Dr. Grover's ability to utilize the summer student which would be a period of time much beyond March 31st, 1990. In a memo from Jill Baker to Dr. Grover, she again states that the five person months must be used before March 31st, 1990.

Dr. Grover spoke with Ms. Berndt, an NRC personnel person in charge of this area of summer students, and asked her if she could clarify with the personnel branch if the contents of Mrs. Baker's memo were correct since Dr. Leddy's decision made no reference to having the person months utilized by March 31st,



1990. Ms. Berndt sent a memo to Dr. Leddy who responded that the award he had made was not time conditional, but hoped it would be enacted within a year. In the final analysis, Dr. Grover did obtain a summer student. The fact that Dr. Grover was required in the first place to grieve to obtain the services of a summer student, and subsequently be met with the directive of Jill Baker (which was clearly wrong in its context) further confirmed to this Tribunal a continuing deferential treatment of the Complainant.

On January 29, 1990, Dr. Grover received a fax transmission from Dr. Kay Matsuda of Japan which was an invitation for Dr. Grover to attend a workshop in Japan from the dates March 25th to 31st, which was described as a workshop to promote collaborative research between Canada and Japan. This programme was being run by the Science and Technology Agency in Japan. All expenses for travel and living allowance were to be paid by the Government of Japan. Dr. Grover was to respond immediately if he was available to attend. The letter of invitation is found at Exhibit R-38, p. 546.

Dr. Grover immediately contacted his section head, Dr. Bedford and after a discussion with him tentatively accepted the invitation and confirmed same by telephone. He requested in a memo dated January 29th, 1990 that Dr. Bedford obtain the President's approval for the trip before February 7th, 1990. The approval for the trip was granted on January 31st, 1990. Dr. Grover received a letter from the Department of External Affairs and International Trade Canada on February 28th, 1990 prepared by Stuart Wilson, Science and Technology Officer for the Department. This letter enclosed a description of the objectives of the joint Canada/Japan workshops and their expectations, along with a

description of what was expected of Dr. Grover or any other participant. Amongst other things, it stated that participants should be prepared to discuss the relevant research activities that their home institute would be able to provide and a broad overview of the activities across Canada in his particular area of expertise. The general tenor of this letter accordingly, expected a workshop participant to be prepared to discuss on an informed basis general activities in his particular area of expertise. This was not a sit and observe type conference or workshop.

Dr. Grover accordingly forwarded a memo to Dr. Bedford on March 7th which is found at Exhibit HR-38, p. 557 outlining the nature and purpose of the workshop. He

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also requested that Dr. Bedford provide him with information regarding the research programmes of the division and NRC in areas relevant to the workshop. He then described the various areas of optics related work that he would like to be briefed on.

He concluded by suggesting that he would like to be briefed in these various areas, so that he could represent in the best position NRC at the workshop. The conference as indicated was to commence March 25th. By March 14th, Dr. Grover had not received any response from Dr. Bedford. Dr. Grover forwarded a further memo on that date (found at Exhibit HR-38, p. 559) and he reiterated his request for briefing.

On March 16th, 1990 Dr. Grover received a memorandum in response to his two previous memorandums (found at Exhibit R-38, p. 560). The memorandum of Dr. Bedford was curt, unresponsive and in the opinion of the Tribunal intended to minimize the importance of Dr. Grover's participation in the workshop. Not only did the memo offer no assistance whatsoever in answering a very legitimate request by Dr. Grover for information, but it was completely negative and uncooperative in its approach. It is difficult to understand such a response, and the negative treatment of a fellow scientist prior to his embarking upon participation in an international workshop.

As indicated in the introduction of our reasons, the Tribunal adjourned this hearing at one point on May 16th, 1990, to afford the parties an opportunity to discuss a satisfactory resolution of the complaint. What in fact occurred during the adjournment period, which lasted until January 28th, 1991, was that the Respondent terminated Dr. Grover's employment.

The Tribunal continued to hear further evidence, and arguments up to June 24th, 1991, at which time we learned that Dr. Grover's termination had been

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reversed, and he was now reinstated to a position as suggested in a letter from Dr. Perron dated August 18th, 1990 (found at Exhibit HR-29, p. 73).

The events which led up to Dr. Perron's letter, along with the subsequent termination and eventual reinstatement of Dr. Grover have been carefully examined and weighed by this Tribunal.

It was difficult for the Tribunal to comprehend what motivated the Respondent to embark upon this course of action with respect to the Complainant during the currency of these proceedings. The treatment of Dr. Grover during this period of time merely served to confirm to this Tribunal the validity of the complaints as set out in three complaint forms.

It would appear from the evidence that, in the latter part of 1989 and early 1990, NRC went through another period of reorganization. On June 27th, 1990, Dr. Vanier announced to the Institute for National Measurement Standards (INMS) staff that there would be a new organizational group structure. This announcement is found at Exhibit HR-29, p. 52. Attached to this notice is an organizational chart and included in the reorganized Photometry and Radiometry Section is the name of Dr. Grover. Dr. Vanier was the Director/General and Dr. A.R. Robertson was Department Head over various sections. Dr. Bedford was the Section Head named for Photometry and Radiometry. In addition to receiving this announcement, Dr. Grover testified that he attended two meetings, one with Dr. Clive Willis, Vice-President of Science and one with Dr. Alan Robertson. These meetings followed shortly the announcement of Dr. Vanier. Dr. Robertson informed INMS staff, including Dr. Grover, that the number of approved positions for INMS was 95. Subsequently, Dr. Grover spoke with Dr. Robertson some time around June 20th, 1990, and he was advised at that time that he would not be laid off.

Apparently Dr. Robertson had previously left this message with Dr. Grover's technical associate, Ray Fink. Dr. Grover on June 20th, merely wished to confirm with Dr. Robertson that the message he had left with Ray Fink was that he would not be laid off.

On July 5th, 1990 Dr. Willis addressed a meeting of the scientific staff of INMS, and advised the staff that there would not be any further layoffs from the Institute and that the approved current strength of the staff was 95 with a possibility that it could be increased to 115 people. At that time, there

were approximately 90 members on the INMS staff. Dr. Willis was the Vice-President of Science and INMS was under his jurisdiction. In addition to the announcement regarding no further layoffs, Dr. Willis also advised staff members that there was additional funding available in the amount of eleven million dollars, and assured staff members that sufficient funding for programmes in INMS would be available.

Dr. Grover also received on July 16th, 1990 a bulletin from the President of NRC which was addressed to all employees (contained at Exhibit HR-29, p. 72). In the second paragraph of that bulletin, it is stated as follows:

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"First of all, I can tell you that NRC has finished the process needed to reduce its staff levels by 296 positions required to balance its budget for 1990-91 and to meet the target set in the 1985-6 government-wide reductions."

When viewed against the announcements of Dr. Vanier, Dr. Willis and the assurances of Dr. Robertson, it was difficult for Dr. Grover to assess the full impact and purpose of Dr. Perron's letter of August 8th, 1990.

Cynthia Sams, an employees' relation officer with the Professional Institute of Public Services of Canada, responsible for representing employment issues with NRC, testified that Dr. Grover was the only employee who received a termination letter from the President purportedly in accordance with the N.R.C. Workforce Adjustment Policy. This is another example of deferential treatment to which Dr. Grover was subjected. Ms. Sams further testified that Dr. Grover's termination was handled differently from other persons being laid off. Attached to the letter was appendix "A" setting out a proposal for a research position in INMS. Paragraph 3 on p. 2 of Dr. Perron's letter reads as follows:

"Please advise me by August 30th if you accept this proposal. If you do, discussions with your section head can commence immediately to further define the project parameters. In the meantime, feel free to discuss this proposal with Dr. Vanier."

Dr. Grover in a letter dated August 28th, 1990 to Dr. Perron accepted the proposal. This acceptance is found at Exhibit HR-29 p. 81. Dr. Grover testified that he was very concerned that unless he accepted the proposal before August 30th, 1990 he was running the risk of losing his job. At the same time, Dr. Grover set about to prepare for the work contained in Dr. Vanier's proposal (appendix "A" to Dr. Perron's letter) and completed procurement requisition forms for material to be used in the proposal. This requisition was approved by Dr. Bedford and was done on August 17th, 1990.

On September 10th, 1990, Dr. Perron wrote to Dr. Grover (that letter is found at Exhibit HR-29, p. 82). He acknowledged receipt of Dr. Grover's acceptance of August 28th and goes on to say the following:

"However, I would be remiss not to remind you that you have until 15 October 1990 to present a mutually acceptable research project, failing which your employment at NRC will be terminated. This proposal must follow the directions contained in appendix "A" to my letter to you dated 8 August 1990.

I am sure you will understand this was part and parcel of our discussion of Friday, August 10th, 1990 as confirmed by our "minutes of settlement" forwarded by our legal counsel,

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Mr. Brian J. Saunders through your lawyer Mr. Bennett."

Needless to say, the reference to minutes of settlement created difficulties for the Tribunal since counsel for the parties had apparently agreed prior to the resumption of our hearing on January 29th, 1991, that same would not be filed. We are accordingly unable to infer what took place in the discussion of August 10, 1990. We can however infer quite clearly, from Dr. Perron's letter of September 10th, that he was putting forth an ultimatum for October 15th, 1990, failing which termination would take place. It is quite clear to the Tribunal that the position was substantially different than the proposal of August 8, 1990 which was accepted by Dr. Grover.

In the month of September, 1990, Dr. Grover became aware that there were substantial funds available for capital

projects. This information became available to him through Joanne Zwinkels, an assistant to Dr. Bedford. She discussed with Dr. Grover the fact that she had attended a meeting wherein Dr. Vanier told all section heads that there was available money for projects, and that they should ensure that their requests for project allocations were made promptly. With the funding availability in mind, Dr. Grover prepared a project proposal as requested by Dr. Perron's letters of August 8th and September 10th, 1990 and submitted same under letter to Dr. Perron dated October 15th, 1990. (This proposal is to be found at Exhibit HR-29, pp. 90-98). Dr. Grover testified that when he prepared the proposal he had in mind the available funding and reviewed the various studies and projections previously prepared by both Dr. Bedford and Dr. Robertson as they related to the Laboratory for Basic Standards (LBS). (Both of these studies and projections are found at Exhibit HR-29, p. 100 and 113).

Dr. Grover testified that when he first received Dr. Perron's letter of August 8th, he endeavoured to arrange a meeting with Dr. Vanier to discuss the proposal as suggested by Dr. Perron in his letter. He arranged for a meeting with Dr. Vanier for Monday, August 13th which was fixed for 3:30 p.m. He attended at Dr. Vanier's office and at 3:30 p.m. he was told to go back to his office and wait for a call, which he did. He was called at 4:00 p.m. and when he arrived at the meeting, he was surprised to see that Dr. Bedford was in attendance. Dr. Grover discussed the content of Dr. Perron's letter and expressed how pleased he was that NRC was entering into research in the area of fibre-optics and that he was being asked to develop a programme in this area for NRC. He advised Dr. Vanier that he wanted to have the meeting to discuss the guidelines for the programmes area for NRC. He also advised Dr. Vanier that he wanted to have the meeting to discuss the guidelines for the programme. Dr. Vanier advised him that neither he, nor Dr. Bedford, had any expertise in the area of fibre-optics. Dr. Grover then went on to discuss in detail all of the things that he would be putting

into his proposal. Both Dr. Vanier and Dr. Bedford listened basically in silence and without comment.

Dr. Grover related in detail about the fibreoptics activities and Dr. Vanier advised Dr. Grover that they had

decided to discontinue Dr. Grover's research project in the area of optical testing, optical sensing and metrology, all of which was apparently in the mandate of INMS. This response made little sense to Dr. Grover, and meant that the new proposal in fibreoptics was only because they discontinued Dr. Grover's previous research. Dr. Grover advised that he would need a person with scientific background to do the work referred to in Dr. Perron's letter. At this point, Dr. Bedford said he would not be allowed to do any research, and Dr. Vanier advised Grover that he would only do measurements. Dr. Grover was in a state of disbelief at this point, as this type of work in measurements is work for a technician not a senior research scientist.

Dr. Grover then requested that he get together with Dr. Bedford to develop the proposal set out in Dr. Perron's letter. Dr. Bedford responded that he had no knowledge of what Dr. Grover was being asked to do in the letter, he testified he had not seen such a document and had no knowledge of the proposal. Further, he advised Dr. Grover that he did not have any expertise in the area of fibreoptics. He then advised Dr. Grover that he would have to develop the proposal by himself.

Dr. Grover concluded from this meeting that Dr. Vanier and Dr. Bedford were simply endeavouring to cut short the extent and scope of his programme, and were not prepared to give him any assistance or information to assist in the developing and planning.

Subsequently, Dr. Grover met with Dr. Bedford immediately after the meeting with Vanier and Bedford and sought his approval for requisitioning certain materials. Dr. Grover at that time discussed in further detail his proposal, and gave him further information as to how he was working to develop the proposal in response to Dr. Perron's letter. Dr. Grover received a document marked as Exhibit R-41 which is apparently a summary by Dr. Vanier of the meeting he had with Dr. Grover. Dr. Grover testified that he disagreed with the contents of this summary.

Dr. Grover further testified that he did not prepare any rebuttal memorandum since on the advice of counsel he was endeavouring to resolve the matters raised in Dr. Perron's letter of August 8th and did not wish to create any additional friction. The Tribunal accepts the evidence of Dr. Grover as to the general content of the actions of Dr. Bedford and Vanier at that meeting and where it differs from evidence of Dr. Vanier and Dr. Bedford the Tribunal prefers the evidence of Dr. Grover in this regard.

On October 3rd, 1990 Dr. Bedford brought to Dr. Grover a photocopy of a NOI bulletin. He asked Dr. Grover if he had seen this document and Dr. Grover advised him that he had an original copy in his desk and after a brief discussion about the proposal, Dr. Bedford left a copy of the NOI bulletin. A few days later, Dr. Grover had delivered to him a memorandum which is

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found at HR-29, p. 85 which has attached the NOI bulletin. The unusual aspect of the copy delivered on October 5th was that it had the word "fibre" circled on all of the pages of the bulletin.

It is obvious to the Tribunal that Dr. Bedford was conveying the message that anything proposed by Dr. Grover in the area of fibreoptics was not going to be of any consequence since the NOI was already involved in these activities. Dr. Grover testified, and we accept his evidence that the fact that NOI was involved in fibreoptics did not in any way create a problem for NRC which was involved in such activities on a much larger scale.

Following the admission of Dr. Grover's proposal on October 15th, he received a memo from Dr. Vanier which is under date of October 19th which is found at Exhibit HR-29, p. 164.

The memorandum indicates that both Vanier and Bedford studied the proposal and advised Dr. Perron that it was unacceptable. Dr. Grover learned on November 1st through his counsel that Dr. Perron had rejected his proposal. He then immediately went to Dr. Vanier's office and further prepared a proposal and requested a meeting. Dr. Vanier was sitting in his office with the door open and when the secretary requested if Dr. Vanier had time to see Dr. Grover, she was told that Dr. Vanier would not see him and to return the following day. The second proposal is found at Exhibit HR-29, p. 170. The following day, Dr. Grover returned to see Dr. Vanier and was surprised to find that present with Dr. Vanier was NRC's legal counsel, John Leman. Dr. Vanier advised Dr. Grover that he did not want to discuss the proposal or any of the concerns regarding same with him. Dr. Grover insisted that Dr. Vanier accept a copy of his further proposal. When Dr. Grover advised Vanier he was going to discuss the further proposal with Dr. Bedford, Vanier advised him to forget about seeing Bedford since he would be involved in an urgent meeting with him. Dr. Grover left a copy of his further proposal on November 2nd with Dr. Bedford requesting a meeting. Dr. Grover



was anxious to see Dr. Bedford on November 2nd as he was supposed to leave to attend a convention in Boston the following Monday.

Dr. Grover was unable to locate Dr. Bedford on November 2nd.

With respect to Dr. Grover's proposed trip to Boston, he received a memorandum from Dr. Vanier on that date cancelling the approval and financial support to attend the meeting which was a meeting of the Optical Society to commence on November 5th.

Dr. Grover was a Fellow of this Society and was to deliver a paper on the programme. He had requested approval for the trip which was recommended by Dr. Bedford on October 10th, 1990. As indicated, Dr. Grover was to present a paper at this conference and the Optical Society of America was one of the most prestigious societies organized for scientists involved in optics. Dr. Grover had received his travelling package which included travellers' cheques.

Dr. Grover received Dr. Vanier's memorandum at 3:45 p.m. on November 2nd which is contained at HR-29, p. 41. This

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memorandum rescinded his authority to travel and advised that if he proceeded to the meeting in Boston he would have to pay his own expenses. The memo further advised that Dr. Vanier was going to assess his revised proposal on behalf of Dr. Perron. On November 5th, Dr. Grover received a hand written memo by Dr. Vanier which is found at Exhibit HR-29 p. 40. This memo confirmed the conversation Dr. Vanier had with Dr. Grover on November 2nd cancelling the Boston trip and confirming that if he in fact went to Boston that his expenses would not be paid under any circumstances.

The cancellation of the Boston trip was professionally a tremendous embarrassment for Dr. Grover. He had been recently honoured as a Fellow of the Society and was to present a paper at the Boston programme. He was obliged to cancel out from the programme making as an excuse an emergency situation at NRC. The Tribunal finds that the cancellation of the Boston trip was occasioned by the Respondent's proposed termination of Dr. Grover which took place on November 7th, 1990 by letter prepared by Executive Vice-President of NRC Dr. R.F. Pottie. This termination letter is to be found at Exhibit HR-29 p. 186.

Obviously the Respondent could ill-afford to send Dr. Grover to a prestigious conference which might further enhance his career when they had already determined to terminate him. The Tribunal finds that the action of the Respondent in cancelling the Boston trip was part of an overall calculated process to terminate Dr. Grover and that the handling of this aspect of his termination, namely the Boston conference was for Dr. Grover a thoroughly callous and humiliating experience.

Dr. Vanier prepared a memo to Dr. Perron which is found at Exhibit HR-29, p. 176. Reference is made in that memo to previous proposals put forward by Dr. Grover since 1987. The Tribunal finds that the Respondent on these various occasions including the two proposals put forward in response to Dr. Perron's request was simply a method utilized by the Respondent to frustrate Dr. Grover. The most telling evidence in this regard was given by Dr. Bedford. He testified that at the request of Dr. Vanier he in fact critiqued both of Dr. Grover's proposals which were prepared in response to Dr. Perron's letter of August 8th. The most incredulous part of Dr. Bedford's evidence was that he had never seen appendix A of Dr. Vanier's proposal attached to Dr. Perron's letter. When questioned by the Tribunal about this startling evidence, Dr. Bedford testified as follows found at Volume 24, p. 4425:

"THE CHAIRMAN: Can we stop there?"

What is it that you understood from Dr. Vanier's general outline attached to Perron's letter, that the area of calibration was to cover?

WITNESS: I don't know that I've seen this outline you're talking about.

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THE CHAIRMAN: Oh, you must have, surely to goodness. You wouldn't know what you would be working from unless you did.

Can you give him a copy of Dr. Vanier's.....attached to Perron's letter of August 8th.

Dr. Bedford, in case you don't understand, this project description was prepared by Dr. Vanier. Have you seen that before?

WITNESS: I think I have not seen this before.

THE CHAIRMAN: You've never seen that before?

WITNESS: No, not to the best of my knowledge."

Then again, when Dr. Bedford was questioned as to why he was not given the complete background of Dr. Perron's letter including the appendix A so that he could do a thoroughly knowledgeable critique of Dr. Grover's new proposals, he responded as follows at p. 4430:

"THE CHAIRMAN: Don't you think there is a certain element of unfairness in that process?

WITNESS: Yes."

Dr. Pottie, author of the termination letter of November 7, 1990 testified as to what he considered special treatment being given to Dr. Grover. He felt that the special treatment consisted of giving Grover the opportunity of submitting proposals and other persons who were involved in layoffs did not have this opportunity. When questioned by the Tribunal however Dr. Pottie basically summarized the Tribunal's opinion of this termination process which started on August 8th. His evidence is contained in Volume 24, p. 4584:

"THE CHAIRMAN: We heard this morning that Dr. Bedford was not aware of the criteria that Dr. Vanier had set down in his attached letter to Dr. Perron's letter before he critiqued Dr. Grover's two proposals. He told us today he was unaware he had never seen that. Is that the type of special treatment you are referring to?

WITNESS: That certainly surprises me.

THE CHAIRMAN: Yes it surprised us too.

WITNESS: I would have expected that----

THE CHAIRMAN: Anyone who is going to critique something would know what the ground rules were. He had no idea what they were.

WITNESS: That's very surprising.

THE CHAIRMAN: Do you consider it fair?

WITNESS: No I don't."

The Tribunal finds from the testimony given and the Exhibits filed concerning the events between August 8th and November 7th, 1990 the Respondent intended from the outset to terminate Dr. Grover. The process of allowing Dr. Grover to submit proposals to reject same based upon certain prepared criteria was all part of the subterfuge to give the appearance of fairness to this process. In fact the Tribunal finds that the actions of the Respondent throughout this period were contrived and calculated to further humiliate Dr. Grover, and bring to an end his career at NRC. This pre-conceived and well-planned strategy is best depicted in a memorandum to Jacques Vanier from Clive Willis dated 30 October which is found at Exhibit HR-29, p. 235. It reads as follows:

"Memorandum to: Jacques Vanier

From: Clive Willis

Date: 30 October 1990

Subject: Memorandum to C. Grover

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I have your note seeking guidance on how you might sequence correspondence with Dr. Grover if he fails to provide an acceptable research proposal by Thursday's deadline.

There are two issues:

1. Use of NRC facilities by Grover if he chooses to remain on NRC staff during his lay-off period.

We cannot prejudge this issue and therefore we must wait until Grover has had the opportunity to state his preference. Once he has received the notification letter from Dr. Pottie, he has 15 days to decide whether to exercise a pay-out option or to stay on staff for the 6 months. You will only be able to deal with that

eventuality when he has made that choice. You should make no reference to it in your 2 November memorandum.

Your memorandum to Mr. Fink should be sent off with the same 15 days delay.

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2. Attendance at the Optical Society meeting in Boston.

Your memorandum should deal only with this topic and be short and sweet. I suggest something as follows:

"Approval of your request to attend the meeting of the Optical Society in Boston from 5 to 11 November was based on the benefit to be drawn from your possible future involvement in research related to standards for fibre optics. As a consequence of Dr. Pottie's letter to you of today, there remains no such potential benefit from the expenditure of public funds and the approval of your request is thereby rescinded. If you do chose to attend the meeting, then you should be aware that you do so fully at your own expense. You are, of course, required to return any money advanced to you by NRC in relation to this trip.

I have sent a copy of this draft to John Lemman for his review. If he recommends changes he will contact you directly.

c.c. Dr. Pierre O. Perron  
Mr. John Lemman  
Mr. Brian Saunders"

This memorandum affords some of the background explanation for Dr. Vanier's actions and preconceives an excuse for the treatment of Dr. Grover in cancellation of his Boston trip. It is further to be noted that there is reference to Dr. Pottie's letter which was yet to be delivered eight days hence on November 7th. Dr. Grover's second proposal had not yet been delivered at the time this memorandum was prepared.

Dr. Grover filed a grievance both with respect to the cancellation of his Boston trip as well as his termination. As previously indicated, Cynthia Sams, an employee relations officer

with the Professional Institute of Public Service of Canada testified and her

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evidence is contained in Volume 18, p. 2940. She details comparison of the treatment received by Dr. Grover during the termination process as opposed to those other persons involved in the layoff programme. We accept her evidence that the treatment of Dr. Grover was differential and discriminatory.

The employment status of Dr. Grover remained as set out in the letter of Dr. Pottie dated November 7, 1990 up to and including the last day of this hearing which was June 24th, 1991.

On that date, the Tribunal was advised by counsel for the Respondent that Dr. Grover had been reinstated effective May 13th, 1991. His reinstatement was to the position offered by Dr. Perron in his letter of August 8th. At that point of the hearing we had concluded calling evidence and were hearing final argument. Neither counsel for the Respondent nor the Complainant has called further oral evidence to explain this unusual significant turn of events however two document exhibits were filed by counsel for the Respondent. In order to complete the picture of Dr. Grover's career status at the conclusion of this hearing on June 24th, the events are best described in Exhibit R-50 which is a letter dated May 28, 1991 from Respondent's counsel, Mr. Saunders to Mr. Dougall Brown at the law firm of Nelligan, Power. This letter states as follows:

"Mr. Dougall Brown  
Nelligan, Power  
Barristers & Solicitors  
Suite 1900  
66 Slater Street  
Ottawa, Ontario  
K1P 5H1

Dear Sir:

Re: Grover Adjudication

This is to confirm our telephone conversation of May 28, 1991 in which I told you that the NRC will remove the

November 7, 1991 letter terminating Dr. Grover's services and will reinstate Dr. Grover effective May 13, 1991.

The reinstatement is to the position which Dr. Perron offered Dr. Grover by way of letter dated August 8, 1990 and to which Dr. Grover stated his acceptance in a response to Dr. Perron dated August 28, 1990, namely, as a senior research officer to work on standards and measurement techniques of optical fibre communication systems. I am informed that the responsibility for the function is with the Group Leader of the Photometry and Radiometry Program in the Radiation Standards and Thermometry Section of the Institute for National Measurement Standards.

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As a result of the reinstatement, Dr. Grover's salary will resume effective May 13, 1991. There will therefore be no loss of salary associated with the now cancelled lay-off.

Dr. Grover should report back to the NRC immediately. The NRC will be communicating with Dr. Grover shortly to advise him of the specific duties and responsibilities associated with the position.

I understand that Dr. Grover received a payment representing his accumulated vacation credits as a result of now cancelled lay-off. If Dr. Grover wishes to retain the vacation credits, then he will have to repay the NRC the money representing those credits.

As a result of this decision, the relief which Dr. Grover seeks before the Public Service Staff Relations Board has been granted. I understand that in light of this you will be withdrawing Dr. Grover's grievance respecting his termination from the Board. Kindly advise me whether you will also withdraw Dr. Grover's grievance in respect of the cancellation of the trip to Boston.

Yours very truly,

Brian J. Saunders  
Civil Litigation Section  
(613) 957-4865"

This letter was followed by a letter to Dr. Grover under date of June 3rd, 1991 which was authored by Dr. Vanier. This letter was marked as Exhibit R-49. On p. 2 of that letter at the first paragraph it commences as follows:

"It is evident that communication between you and NRC management has been poor and that as a result of development of an acceptable research project became a difficult task....."

The Tribunal is left to infer that the Respondent found its termination position with Dr. Grover untenable when it faced the grievance procedure and reinstated him to avoid further legal process. Part of the consideration for reinstatement was that Dr. Grover withdraw his grievances as it related to the termination and cancellation of the trip to Boston. The Tribunal can only infer that the Respondent finally realized that the treatment they subjected the Complainant to throughout the termination process could only be rectified by reinstatement.

The Respondent endeavoured to explain away the differential treatment of Dr. Grover by calling evidence that

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suggested that he was a disruptive force at N.R.C. Further that his credentials as an important scientist were possibly no better than an average scientist and that his expectations of career advancement at N.R.C. far exceeded his abilities. Most of the Respondent's evidence was suggestive of Dr. Grover being more a victim of budget cutbacks and reorganization difficulties at N.R.C. as opposed to a question of discrimination or differential treatment. In some instances the evidence of the Respondent was to the effect that Dr. Grover was treated no better or no worse than any other scientists and indeed in some cases, received preferential treatment over other scientists. The Tribunal does not accept the evidence of the Respondent on these points as an explanation for what the Tribunal considers discriminatory treatment of Dr. Grover.

The Tribunal prefers clearly the evidence of Dr. Cowan, Mr. Major and Dr. Chapman, all of whom testified consistently of Dr. Grover's scientific ability being preeminent within his sphere of expertise, his ability to get along with other persons and his managerial ability as well as his ability to organize and



present papers and proposals. Their evidence was independent, candid and the Tribunal accepts their opinions as to Dr. Grover's character and abilities.

Throughout the course of the evidence in this hearing, the Tribunal became concerned as to the propriety of N.R.C.'s handling of this case. We summarize our observations in this regard as follows:

a) Dr. Cowan testified that when he was contacted by N.R.C.'s counsel, John Leman, that Mr. Leman suggested to him that in testifying he might in some way jeopardize his career. Dr. Cowan found the remarks inappropriate and offensive. We summoned Mr. Leman to account for his actions and basically he denied that he had made these remarks to Dr. Cowan. The Tribunal prefers the evidence of Dr. Cowan over Mr. Leman and finds such comments were not only inappropriate for a legal representative of the Department of Justice, but calculated to intimidate a prospective witness to this hearing;

b) The witness Gloria Dumoulin was obviously intimidated by having to testify at these proceedings. She quite clearly made it known that she feared for further reprisals at N.R.C. by reason of her testimony, and felt that her chances of promotion in the future had been negated.

c) Jill Baker testified in an effort to explain the reason for the diskette being removed from Ms. Dumoulin's recording machine. This action of moving and concealing the diskette was not satisfactorily explained to the Tribunal by Jill Baker. Her actions alone following this incident fortified the Tribunal's findings that the treatment of Dr. Grover was indeed differential, far reaching and in this particular incident an attempt to

obstruct full disclosure of the facts.

d) The Tribunal finds the position taken by Lorraine Collette with respect to these proceedings as one of conflict which resulted in a grossly inappropriate handling of Dr. Grover's original complaints to the Commission. It

is significant that Lorraine Collette did not testify before this Tribunal despite her questionable behaviour and position in acting as N.R.C.'s Human Rights Advisor.

e) We accept the evidence of Cynthia Sams regarding her frustrated attempts at getting disclosure of Dr. Grover's case, and the resistance by N.R.C. staff to allowing her the background and information relating to his termination.

f) In Exhibit HR-29, page 235 a memorandum between the Vanier and Willis is recreated in totality. That memorandum opens with the sentence "I have your note seeking guidance..." We were unable to obtain a copy of this note despite our requests for same.

Individually when these incidents are viewed in their totality this Tribunal finds that from the commencement of Dr. Grover's complaints down to the last date of this hearing, N.R.C. endeavoured to apply pressure on witnesses as well as control and prevent the introduction of some of the evidence to this Tribunal. These actions themselves led the Tribunal to the conclusion that this was differential treatment of Dr. Grover.

#### The incidents

as described aforesaid in paragraphs (a) to (f) inclusively are in the opinion of this Tribunal a clear contravention of Section 59 of the C.H.R.A.

On a full review of all of the evidence, the Tribunal makes the following findings:

a) Dr. Grover throughout 1981 to 1986 was on a positive career progression with N.R.C. and N.O.I. He was an above average scientist with particular expertise in optics.

b) Following Dr. Grover's return to full time work in N.R.C. in 1986, we find that he was subjected to a course of differential treatment, perpetrated by N.R.C. management, and in particular Dr. M. Laubitz, Dr. Preston Thomas, Dr. Bedford and Dr. Vanier.

c) We find that the treatment of Dr. Grover by N.R.C. management was calculated to diminish his status as a scientist, and reduce his research activities, impede his promotion progression, reduce his ability to develop his scientific career internationally and lastly put him through

an ill-devised termination process which was both humiliating and stressful.

d) We find that the conduct of N.R.C. management resulted not only in the destruction of Dr. Grover's career but caused him undue distress and illness, disrupted his family and home life and put unnecessary stress on his family members.

e) That the Respondent's explanations offered for

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management's treatment of Grover, namely budget restrictions, research cutbacks, change of program, personality conflicts, and department reorganization, were pretextual.

f) At the time Dr. Grover lodged his complaint with the Commission none of the approximately 43 key management positions at N.R.C. were held by a member of a visible minority.

g) The treatment of Dr. Grover was differential and described in detail in these reasons. No other scientist was treated in a similar manner as was Dr. Grover, from the time he returned on a full-time basis at N.R.C. in 1986, down to the point of his termination on November 7th, 1990.

## THE LAW

The complaint forms of the Complainant allege discriminatory practices commencing in September 1987 up to and including January 1991 on the grounds of race, colour and national origin contrary to Section 7 of the Canadian Human Rights Act.

The relevant sections of the Act are as follows:

3.(1) For all purposes of this Act, race, national or ethnic origin, colour, religion, age, sex, marital status, family status, disability and conviction for which a pardon has been granted are prohibited grounds of discrimination.

7. It is a discriminatory practice, directly or indirectly,

a) to refuse to employ or continue to employ any individual, or

b) in the course of employment, to differentiate adversely in relation to an employee, on a prohibited ground of discrimination.

The Tribunal has reviewed the following authorities relating to the burden and order of proof of discrimination cases:

Ontario Human Rights Commission v. Etobicoke [1982] 1 S.C.R. 202,  
Morissette v. Canada Employment and Immigration Commission  
(1987), H.C.H.R.R. D/4390 (Can.Trib.),  
Basi v. Canadian National Railway (1988), 9 C.H.R.R. D/5029 (Can.Trib.)  
Karaumanchiri v. Liquor Control Board of Ontario (1987), 8  
C.H.R.R. D/4076 (Ont. Bd.) aff'd. 1988, 9 C.H.R.R. D/4868 (Ont.Div.Ct.)  
Israeli v. Canadian Human Rights Commission and Public  
Service Commission (1983), 4 CH.R.R. D/1616

In the Basi case the following summary and burden of proof was made at paragraph 38474:

"The burden, and order, of proof in discrimination cases involving refusal of employment appears clear and constant

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throughout all Canadian jurisdictions: A complainant must first establish a prima facie case of discriminations; once that is done, the burden shifts to the respondent to provide a reasonable explanation for the otherwise discriminatory behaviour. Thereafter, assuming the employer has provided an explanation, the complainant has the eventual burden of showing that the explanation provided was merely a, "pretext" that the true motivation behind the employer's action was in fact discriminatory."

The decision goes on to deal with the difficulty in discrimination cases in proving the allegations of same by direct evidence. At paragraph 38479 the decision recites as follows:

"Standing alone, that explanation appeared to meet the evidentiary onus of providing a reasonable explanation that is equally consistent with the conclusion that discrimination on the basis prohibited by the Code is not the correct explanation for what occurred.

Faced with the employer's response, the final evidentiary burden returns to the complainant to show that the explanation provided is pretextual and that the true motivation for the employer's action was in fact discriminatory.

To accomplish that end the complainant would have a herculean task where it is necessary for him to prove, by direct evidence, that discrimination was the motivating factor. Discrimination is not a practice which one would expect to see displayed overtly. In fact are there rarely cases where one can show by direct evidence that discrimination is purposely practised. (Bolding is by the Tribunal).

Since direct evidence is rarely available to a complainant in cases such as the present it is left to the Board to determine whether or not the complainant has been able to prove that the explanation is pretextual by inference from what is in most cases circumstantial evidence:"

The Chairman in the Basi case then dealt with the onus requirements for establishing circumstantial evidence and refers to a passage in the book *Proving Discrimination in Canada* (Toronto, Carswell 1987) by B. Vizkelety wherein the following passage is referred to:

"There is indeed, a virtual unanimity that the usual standard of proof in discrimination cases is a civil standard of preponderance. An appropriate test in matters involving circumstantial evidence, which could be consistent with this standard, may therefore be formulated in this manner: an inference of discrimination may be drawn where the evidence offered in support of it renders such an inference more probable than the other possible inferences or hypotheses."

In the Karaumanchiri case, Justice Rosenberg on appeal, dealt with the grounds of appeal regarding the burden of proof,

in the following manner:

"The Applicants/Appellants submitted that the Board of Inquiry misunderstood and misapplied the burden of proof.

The legal burden of proof with respect to direct discrimination as opposed to adverse effects discrimination under Section 10 of the Code at all times remains with the Commission. The Respondent to a Human Rights Complaint carries only a secondary or evidential burden. Thus the Complainant must make out a prima facie case. The Respondent then has a evidentiary or secondary burden to come forward with some evidence to explain its action. The Complainant may then rebut this with evidence tending to show that the explanations constitute pretext. (then follows a recital of decisions).

In this case since the Applicants/Appellants submitted evidence in great detail and during the very lengthy proceedings, the onus is only relevant in the event that Baum, after considering all of the evidence cannot decide either way on the balance of probabilities whether there has been discrimination. Fundamental to Baum's reasons was his finding that the evidence and explanations adduced by the L.C.B.O. through its witnesses Clark, Couillard and Parker were not credible."

In an effort to allow both Complainant and Respondent the opportunity to present their case to its fullest extent the Tribunal received a number of documents, as well as oral testimony, which was of little assistance in determining the issues before us. We have concluded, however, after a thorough review of the evidence, that based upon the conclusions and findings set out herein, the Complainant Dr. Grover has quite clearly satisfied the onus upon him, and made out a prima facie case of discrimination by the Respondent, N.R.C. which was a contravention of Section 7 of C.H.R.A. We can find no credible explanation on the part of the Respondent for the discriminatory treatment, which was clearly evidenced in this case in its dealings with the employment and career of Dr. Grover. As specifically indicated in our findings, the explanations given by the Respondent for the treatment of the Complainant as the Tribunal has detailed herein, are in our opinion pretextual.

We cannot leave this aspect of our decision without commenting again on some of the evidence received from the Respondent through the witnesses Jill Baker, Dr. M. Laubitz, Dr. Preston-Thomas and Dr. Vanier. Their evidence is in many instances vague, contradictory and lacking in detail. We found these witnesses lacking in credibility. Dr. Grover on the other hand, gave his evidence in a clear, detailed, precise manner with considerable candour. His evidence was not shaken, in any way, in cross-examination. We accept his evidence as it detailed the particulars of his complaints, and where his evidence differs from the evidence of those witnesses called by the Respondent, the Tribunal chooses to accept the evidence of Dr. Grover. His character and credibility was substantially corroborated by the

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witnesses Dr. Cowan, Dr. Chapman and Mr. Major. We accept the evidence in this regard.

Within the context of human rights development and as enunciated in case law, the observation is made that racial discrimination more often than not, is subtle and covert. In weighing evidence, one often has to assess circumstantial evidence in order to identify as was described in the Basi case, "the subtle scent of discrimination". Upon review, in detail, of the evidence in this hearing, the Tribunal finds that there has been discrimination. The actions of N.R.C.'s management, the handling Dr. Grover's career, promotion submissions, career recognition potential and career advancement, and in particular the entire termination and eventual reinstatement process, starting with Dr. Perron's "ultimatum letter" are far from covert or subtle actions on behalf of the Respondent. The Tribunal finds much of this treatment, as outlined in detail in the reasons herein, flagrant and calculated to humiliate and demean the Complainant Dr. Grover. The Respondent's counsel was prepared to concede that the termination process of Dr. Grover, which took place during the currency of this hearing, was indeed harsh. Dr. Bedford and Dr. Pottie were prepared to concede that aspects of this termination process were "unfair". The cancellation of the "Boston Trip" was explained away as necessary part of the career termination of Dr. Grover, without regard to the humiliation attached to withdrawing at the last moment from a scientific conference in which he was to participate. This Tribunal finds that words descriptive of this treatment such as

"harsh or unfair" fall far short of describing the conduct of N.R.C. in the treatment of Dr. Grover.

The Tribunal has set out in detail the concerns it has, as it relates to the Respondent's handling of certain aspects of this hearing. In particular, the retaining by Jill Baker of the diskette of Dr. Grover's promotion submission, the evidence of Gloria Dumoulin, the evidence of Dr. Cowan and his concerns regarding N.R.C. counsel John Leman, the impropriety of conduct and obvious conflict of interest of N.R.C. Human Rights Advisor Lorraine Collette, and the evidence of Dr. Grover that he was told by Dr. Vanier he could not advance his career unless he withdrew a grievance against N.R.C.

In this regard, the Tribunal would point out the provisions of Section 59 of the C.H.R.A. which reads as follows:

"59. No person shall threaten, intimidate or discriminate against an individual because that individual has made a complaint or given evidence or assisted in any way in respect of the initiation or prosecution of a complaint or other proceeding under this Part, or because that individual proposes to do so."

In view of our concerns regarding this evidence as received by the Tribunal, it is our strong recommendation that such evidence in these areas as outlined, be referred by the Canadian Human Rights Commission to the Attorney General of Canada for review and prosecution pursuant to Section 60 of the

Act.

To conclude our findings, on the law as it relates to this hearing, we were referred to a portion of a report of the Donald Marshall Enquiry by counsel for Dr. Grover which portion reads as follows:

"Racism exists as a demonstrable social factor in social relations in Canada.... A resolute political will must be adopted to acknowledge up front the existence of racism and to set about eliminating it by moving it into the public policy agenda. Policy makers, legislatures and government



have an extra responsibility to create a climate which will be more inhospitable for racism."

The Tribunal concludes, obviously, that the Respondent, N.R.C., has in fact the responsibility to create a hospitable climate, as recommended by the Marshall enquiry, and failed totally in this regard by its treatment of Dr. Grover as described herein.

## REMEDIES

Counsel for Dr. Grover urged upon us a variety of remedies as appropriate steps to be taken, in the event we found a contravention of Section 7 of the Act. The Tribunal has so found. We are referred to the case of *Robichaud v. Canadian (Treasury Board)*, [1987] 2 S.C.R. 84, wherein the objects of the Human Rights Code are discussed at page 90:

"The Code aims at the removal of discrimination. This is to state the obvious. Its main approach, however, is not to punish the discriminator, but rather to provide relief for the victims of discrimination."

and at page 92:

"It is remedial. Its aim is to identify and eliminate discrimination. If this is to be done, then the remedies must be effective, consistent with the "almost constitutional" nature of the rights protected."

Dealing with the remedies in the order as argued before us, and the law relating to the propriety of same, we find as follows:

a) An apology. Having regard to the unusual, if not bizarre events which highlighted the conclusion of evidence in this hearing, namely the termination and then rehiring and reinstatement of Dr. Grover, it is to be noted obviously that Dr. Grover still is an employee of the Respondent. We have found and determined that the general treatment of Dr. Grover by the Respondent, and the effect of same on his personal health and family life has been both demeaning and devastating. Accordingly, we find it appropriate that a formal written apology for the treatment and conduct by the Respondent of Dr. Grover would serve as a possible

reassurance to him that such conduct and treatment will not continue, and possibly serve as some reassurance to other

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employees that such treatment will no longer be tolerated in the Respondent's work environment. In this regard, we have been referred to the decision of *Hinds v. Canadian Armed Forces* (1989), 10 C.H.R.R. D/5683 (Can.Trib.). We are ordering in this regard, an apology to be prepared by the President of the Respondent, and that same be published in the NRC's publication "Sphere". Further we are ordering that the President prepare and forward an apology to the Optical Society of America with particular reference to the difficulties created for Dr. Grover by being unable to present his paper as a result of the Respondent cancelling the Boston trip.

b) A cease and desist Order pursuant to Section 53.2(a). As was properly pointed out by counsel for Dr. Grover, the discriminatory conduct on the part of the Respondent did not terminate on the filing of a complaint by Dr. Grover.

Indeed, if anything aspects of the treatment appeared to intensify following the filing of the original complaint and the two amended complaints. We are referred to the case of *McCreary v. Greyhound Lines of Canada* (1986), 7 C.H.R.R. D/3250 (Can.Rev.Trib.) The decision found that such an order is customary, when there has been a finding of discriminatory practice and we have so found in this case.

Accordingly, this Tribunal makes an Order pursuant to Section 53(2)(a), that the Respondent forthwith cease further discriminatory practices and further with consultation with the Commission, that NRC's program and policy, as it relates to Human Rights activities within the Respondent, be thoroughly reviewed.

c) Wage compensation:

i) Wage loss as a result of incorrect calculation of Y.R.E. This aspect of the suggested remedies has caused the Tribunal some concern as to how from a practical standpoint correction of same can be put into effect. We know from the evidence that certain

adjustments were made in 1986, by Jill Baker and Dr. Preston-Thomas, which were not brought to the attention of Dr. Grover until 1989, when he was reviewing his personnel file. In addition, the question of Y.R.E. formed part of a grievance, which was partially successful in its ultimate result. The contention of Dr. Grover is that his Y.R.E. is still not appropriately calculated, despite his best efforts. The Respondent has taken the position that the Y.R.E. is something outside of the question of discrimination and is a fact beyond the control of the jurisdiction of this Tribunal, since it is established at the time of his hiring, which was in 1981. Accordingly, the Respondent suggests this is an issue beyond the jurisdiction of the Tribunal at this point, since the original complaint of Dr. Grover was not filed until 1987. We were urged by the Respondent that we can only

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take into effect matters one year prior to the filing of this complaint. We disagree with the position of the Respondent in this regard. The evidence of Sally Deihl was of particular assistance in explaining the losses suffered by Dr. Grover as a result of an improper calculation of Y.R.E. as well as lack of progression of his promotional opportunities for 1986.

We find that the proper calculation of Dr. Grover's Y.R.E. is something which forms part and parcel of his complaints and should be remedied appropriately within the context of this hearing.

ii) Denied salary progression. As was pointed out in Exhibit C-3B, lack of promotional progression after 1986, has had a traumatic effect on Dr. Grover's salary and economic well being within the employment structure.

Section 53(2)(c) provides as follows:

"that the person compensate the victim as the Tribunal may consider for any or all of the wages that the victim was deprived of, and for any

expenses incurred by the victim as a result of the discriminatory practice."

It is the finding of this Tribunal that but for the discriminatory treatment of Dr. Grover, following his return to full-time activity at N.R.C., he would have progressed at an above-average level promotions status up to and including the present time. We have found that his promotional progression was blocked overtly by the actions of Dr. Laubitz, Dr. Preston-Thomas and others at N.R.C. It has been argued that the appropriate method of handling both the correction of proper wages resulting therefrom, as well as the wage loss calculation arising from the lack of promotion, could be handled through an independent arbitrator. We are therefore ordering that the correction of Y.R.E. and the wage loss resulting therefrom, as well as wage loss resulting from the lack of promotion be dealt with by a single arbitrator to be agreed upon by the parties 30 days within the date of this order. In the event that the appointment of the arbitrator cannot be agreed upon, this Tribunal shall maintain jurisdiction and will resolve the issue directly by the calling of further evidence on these issues.

I would point out that with respect to the question of economic loss arising out of his lack of promotion, it is the finding of this Tribunal that based upon Dr. Grover's unquestionable expertise in optics, his positive career progression prior to 1986 and his recognition internationally by his peers, despite N.R.C.'s adverse treatment of him, is a legal basis and justification for being compensated for the loss of opportunity he had to compete for promotions. We so

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find that on the balance of probabilities he would have succeeded in progressive promotions on a regular basis after 1986.

d) Career promotion. It has been urged upon us, that an appropriate remedy be a directed appointment of Dr. Grover by the Respondent to a position commensurate with his scientific capabilities. The Tribunal is satisfied that Dr.

Grover had, and still possesses, the necessary qualifications for administrative leadership, organization and management ability to have achieved at least, a normal promotion to a section head or group leader. We are fortified in this opinion, by the evidence of Mr. Major, when he recited the administrative capabilities of Dr. Grover while temporary director of N.O.I. It is obvious from Mr. Major's evidence that Dr. Grover was responsible for planning of N.O.I. as well as selecting personnel. This was a substantial undertaking on Dr. Grover's part on behalf of N.O.I. Under the circumstances, we are of the opinion that, at a very minimum, the position of the section head or group leader be made available to Dr. Grover at the earliest possible opportunity. We are fully appreciative of the fact that the Respondent has a new promotion policy but the discrimination of Dr. Grover which interfered with his career opportunity commenced far earlier. If the question of appointment to an appropriate position meets with resistance by the Respondent in its implementation, this Tribunal will retain jurisdiction to hear further evidence in this regard.

e) Correction of Personnel File. It was submitted to the Tribunal that Dr. Grover's personnel file, did not fairly and accurately reflect his career progression due to the alteration and tampering of his promotion submissions by Jill Baker, Dr. Preston-Thomas and others. The Tribunal has some concerns that indeed Dr. Grover's personnel file has been the subject matter of great deal of tension and interference by N.R.C. management in inappropriately dealing with same. Accordingly, we are of the opinion that an Order rectifying the personnel file to the extent that such is possible is appropriate. We were referred to the case of *Engell v. Mount Sinai Hospital* (1989), 11 C.H.R.R. D/68 (Ont. Bd.) at page d.75.

f) Damages for Hurt Feelings. Pursuant to Section 53(3)(b) of the Act a person who is a victim of a discriminatory practice, Section 53(3) reads as follows:

"If the Tribunal finds that:

(b) the victim of the discriminatory practice has suffered in respect of feelings or self-respect as a result of the practice, the Tribunal may order the person

to pay such compensation to the victim, not exceeding five thousand dollars, as the Tribunal

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may determine."

The Tribunal had an opportunity to observe Dr. Grover testify through several days of this hearing, as did his wife. We have gathered an impression of this Complainant that he is an extremely proud person, honest, hard working with very strong family ties and devotion. The treatment by the Respondent of Dr. Grover was, in our opinion, humiliating and demeaning, with serious implications resulting in lack of career development. We, in addition, heard evidence of health problems arising out of the stress of this treatment as well as the stress placed upon his wife and children. We are referred to the decision of *Morgan v. Canadian Armed Forces*, (1989), 10 C.H.R.R. D/6386 (Can.Trib.). In that decision at page D60403, the issue of the monetary scale of compensation under Section 53(3)(b) is discussed and the following comments are made:

"I do not think that the evidence of the Complainant's loss of self-respect and hurt feelings is anywhere near the level of hurt feelings, humiliation, and embarrassment that a person suffers who has been discriminated against in public on the basis of race, religion, colour or sex, and particularly, where there may have been repetitions of the prohibited practice and there is evidence of either physical or mental manifestation of stress, caused by the hurt feelings of loss of self-respect. In my opinion, the high end of the monetary scale is more appropriate for these latter type of cases."

It is the conclusion of this Tribunal that an appropriate award for the hurt feelings, humiliation, embarrassment and loss of self-respect by Dr. Grover would indeed be at the high end of the monetary scale under this section. Accordingly, we order that the Respondent pay to the Complainant under this heading the amount of \$5,000.00.

g) Interest. The Tribunal is of the opinion that the law is now quite settled directing payment of interest on an

award of damages, both for hurt feelings and for compensation for lost wages. In the case of Morgan v. Canadian Armed Forces supra we find the following comments on the entitlement of interest which we adopt at page D/6407:

"... the commencement of the entitlement to interest should vary with the nature of the compensation. With respect to compensation for hurt feelings and loss of self-respect, interest should begin to accrue from the date when the Complainant suffers the hurt feelings and loss of self-respect. This will normally be the date when the Complainant learns of prohibited discrimination by the Respondent..."

With respect to compensation for lost wages, interest should normally begin to accrue from the date when the wages would have become due and payable. Under a

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strict application of this principal, it would be necessary to calculate interest on the wage loss from the end of each pay period...."

We accordingly order that interest be paid in the following manner, at the

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prime rate of the Canadian Imperial Bank of Commerce as set at the time of commencement:

- i) in the case of the award for lost wages as a result of improper calculation of Y.R.E. and promotion, from the date that such losses occurred, but no sooner than 1986.
- ii) in the case of Hurt Feelings, to commence from the time Dr. Grover returned under the direction of Dr. Laubitz on a full-time basis at N.R.C. which was in 1986.

h) Costs. Mr. Bennett as counsel for Dr. Grover added, in our opinion, a particularly important dimension to the presentation of the Complainant's case. The role of Mr. Bennett and Mr. Engleman for the Commission, are quite clearly defined and the evidence and the substance of their presentation, rarely overlapped. Mr. Bennett's handling of the evidence, as it relates to the Respondent's improprieties in dealing with evidence and witnesses, was of considerable assistance, as we have reviewed in detail in these reasons. In addition, the presentation of remedies and particularly the evidence on hurt feelings, was particularly well handled, in our opinion, and of great assistance.

Although we were referred to several decisions, none appeared to assist with establishing our jurisdiction on this point. In the Karumanchiri case, the Ontario Divisional Court, in dealing with the question of costs under the Ontario Human Rights Code at Page D4875 indicates as follows:

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"The Applicants/Appellants submitted that Baum erred in law and jurisdiction by awarding costs to the Respondents Karaumanchiri, Ng and Yan. There is no inherent jurisdiction in a court, nor in any other statutory body, to award costs.... Under the principal of statutory interpretation, *expressio unius exclusio alterius* by expressly providing boards of enquiry with authority to award costs only in Section 40(6) of the Code, the legislature has excluded jurisdiction to award costs otherwise under the Code."

In Section 53(2)(c) there is reference to the power of the Tribunal to compensate "for any expenses incurred by the victim as a result of the discriminatory practice:" The C.H.R.A. is silent as to the awarding of costs, and the only possible reference to any power which maybe analogous to the granting of costs, is the reference to "expenses" in Section 53.

In the decision of *Banca Nazionale del Lavoro of Canada v. Lee-Shanok* (1988), 22 C.C.E.L. 59 (F.C.A.), reference is made to the power of awarding costs under the Canada Labour



Code. Justice Stone in that decision, dealing with the question of remedies, including an award of costs under Section 61.5(9)(c) of the Code is as follows:

"Do any other like thing that it is equitable to require the employer to do in order to remedy or counteract any consequence of the dismissal."

In reference to Section 69.5(9)(c), Justice Stone makes the following comment at page 77:

"Legal costs incurred would effectively reduce compensation for lost remuneration, while their allowance would appear to remedy, or at least to counteract the consequence of the dismissal. I am not persuaded by the Applicant's contention that paragraph "c" does not permit an award of costs because the only pecuniary award contemplated by Parliament, is compensation as provided for in paragraph (a). I understand paragraph (c) is extending the range of possible remedies somewhat beyond those already specified in paragraphs (a) and (b). While we are not called upon here to define its true breadth I am satisfied that it does surely embrace the awarding of costs to a successful complainant in appropriate circumstances." (Bolding is by the Tribunal).

If the purpose of remedies is to fully and adequately compensate a complainant for the discriminatory practices, then surely the consequence of costs is part and parcel of a meaningful remedy for a successful complainant. We consider the representation by Mr. Bennett of Dr. Grover, to be totally necessary, and an extremely helpful part of the presentation of this total case. We are not in any way

suggesting that the Commission case was not handled in a totally satisfactory manner represented throughout by its counsel, Mr. Engleman. Indeed, his presentation was equally of assistance to the Tribunal. We would accordingly, therefore, award Mr. Grover's counsel his costs of this proceeding to be assessed on the Federal Court Scale.

## CONCLUSION

For the reasons as set out in the findings of our award, we declare that the rights of Dr. Grover under Section 7 of the C.H.R.A. have been contravened by the Respondent and make the following Order:

a) The Respondent shall provide a written apology to the Complainant, which will apologize for the treatment and conduct of the Respondent towards the Complainant. This formal apology is to be authored by the President of the Respondent within fifteen days from the date of this Order, which is to be published no later than in the second next issue of Sphere. The letter of apology to the Optical Society dealing with the cancellation of the Boston trip shall be forwarded to that Society within 30 days from the date hereof.

b) The Respondent will be required, pursuant to Section 53 (2)(a), to cease and desist from its discriminatory conduct as it relates to the Complainant. Further the Respondent shall enter into consultation with the Commission in order to review thoroughly its' Human Rights program and policy.

c) The parties hereto, shall within thirty days (30) from the date hereof, appoint a mutually agreeable arbitrator to determine and calculate the following:

i) the appropriate Y.R.E. of the Complainant;

ii) the calculation of wage loss, if any, attributable to any resulting alteration to the Complainant's Y.R.E.;

iii) to calculate the loss of salary due to the denial of promotional progression from 1986 to the present.

In the event the parties cannot agree upon a mutual agreeable arbitrator within thirty (30) days, then this Tribunal will retain jurisdiction to hear further evidence to resolve this issue.

d) The Complainant will be appointed, at the earliest possible opportunity, to a position of section head or group leader. In the event that this Order with respect to

promotion is resisted by the Respondent, the Tribunal shall retain jurisdiction to hear further evidence in this regard.

e) The Complainant's personnel file shall be reviewed and all errors or omissions regarding all information to date pertinent to same, shall be rectified forthwith.

f) Pursuant to Section 53(3)(b) of the C.H.R.A., the Tribunal Orders that the Respondent shall pay to the Complainant the sum of \$5,000.00 for hurt feelings.

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g) The monetary orders herein relating to Y.R.E. miscalculation and lack of promotional progression, shall bear interest at the prime rate of the C.I.B.C. Chartered Bank as set on the following dates of commencement:

i) in the case of the award for lost wages as a result of improper calculation of Y.R.E. and promotion, from the date that such losses occurred, but no sooner than 1986.

ii) in the case of Hurt Feelings, to commence from the time Dr. Grover returned under the direction of Dr. Laubitz on a full-time basis at N.R.C., which was in 1986.

h) The Respondent shall pay the costs of the Complainant's counsel forthwith after assessment on the Federal Court Scale.

Dated this 29th day of July, 1992

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CARL E. FLECK, Q.C., Chairman

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RUTH S. GOLDHAR, Member

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KATHLEEN M. JORDAN, Member