

Canadian Human
Rights Tribunal



Tribunal canadien
des droits de la personne

Between:

Jeanne-d'Arc Vollant

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Health Canada

- and -

Reine Parenteau

- and -

Noëlla Bouchard

Respondents

Decision

Member: Roger Doyon

Date: April 6, 2001

Citation: T.D. 4/01

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I. Introduction

[1] Jeanne-d'Arc Vollant has been employed by Health Canada since 1986 as a driver/escort/interpreter.

[2] On April 28, 1995, she filed a complaint with the Canadian Human Rights Commission alleging that her employer differentiated adversely in relation to her concerning employment by reducing her hours of work from forty (40) hours to twenty (20) hours per week. Also, her employer tolerated harassment towards her because of her national or native ethnic origin, contrary to sections 7 and 14 of the *Canadian Human Rights Act*.

[3] Similarly, on May 11, 1995, Jeanne-d'Arc Vollant filed two (2) complaints with the Canadian Human Rights Commission maintaining that Reine Parenteau and Noëlla Bouchard, both employed by Health Canada, harassed her because of her national or native ethnic origin, contrary to the provisions of section 14 of the *Canadian Human Rights Act*.

[4] Finally, on June 11, 1997, Jeanne-d'Arc Vollant filed a complaint with the Canadian Human Rights Commission deeming that her employer, Health Canada, discriminated against her by differentiating adversely in relation to her concerning employment and by refusing to provide her with employment because of her national or native ethnic origin, contrary to section 7 of the *Canadian Human Rights Act*.

[5] These complaints were joined to be heard together and the representatives of the parties chose to submit common evidence to the Tribunal.

II. Evidence of the Commission

A. Jeanne-d'Arc Vollant

[6] Jeanne-d'Arc Vollant is a native Innu from Moisie where she lived until the age of seven (7). She completed her primary education as a boarder at Mani-Utenam and began her

secondary studies in Quebec City. Before completing her final year of high school (*secondaire V*), she returned to her family in Schefferville and worked at the community hospital. She married in 1971. Her husband is a member of the Royal Canadian Mounted Police; she accompanies him to various postings in Quebec and to Montreal in 1980.

[7] As the holder of a driver's licence and a speaker of the Innu language, she met the conditions for hiring as a driver/escort/interpreter on call to Health Canada's Patient Services in Montreal, in 1986. On November 1, 1988, Jeanne-d'Arc Vollant accepted an indeterminate contract of twenty (20) hours/week, allowing her to work forty (40) hours/week.

[8] The job of driver/escort/interpreter consisted in driving clients coming from native communities and routed to Montreal by plane, train or motor coach, to the offices of health professionals, hospitals or homes. In addition, an interpretation service was to be provided as needed. The driver/escort/interpreter was to reassure patients who were frightened and despairing. The driver/escort/interpreter staff consisted of five (5) people, all natives, plus one (1) supervisor, H  l  ne Raymond, responsible for issuing work instructions. A second supervisor, Reine Parenteau, was subsequently added, and the Complainant worked under her direction. The supervisors report to the nursing supervisor of Patient Services, No  lla Bouchard.

[9] Jeanne-d'Arc Vollant said she liked her job. She felt useful helping and looking after the clients. However, she maintained that early in 1989, she noticed a climate of paternalism at staff meetings. According to the witness, the managers were arrogant, disdainful and always had negative comments to make to driver/escort/interpreter staff. This paternalistic climate was also conveyed towards the native clients.

[10] In 1990, during the Oka crisis, the regional director of Medical Services, Claude Paradis, mentioned at a staff meeting that Patient Services might be taken over by native communities. Jeanne-d'Arc Vollant remembers one employee's comment. "But if they are given money, the Indians will buy sub-machine-guns." Now, an employee from the Oka native community was

present. He got up and left the meeting room. Claude Paradis said nothing and, as far as the witness knows, the employee at fault was not reprimanded.

[11] In the years 1990 to 1994, Jeanne-d'Arc Vollant said she saw Noëlla Bouchard make hurtful comments to natives. She recalled in particular one incident when she pointed out to Noëlla Bouchard that a patient had no money to pay for a meal. Noëlla Bouchard said to put him at the street corner and he would find money there. She also heard the link nurse, Madeleine Hébert, say to Noëlla Bouchard that natives were abusing the system.

[12] She also told of having said to Noëlla Bouchard that she did not understand why she did this work, and Noëlla Bouchard retorted: "You know Jeanne-d'Arc, if I didn't work here, I wouldn't be on Welfare."

[13] The witness remembered that in 1992 or 1993, she witnessed an incident involving a client, Claire Jourdain from Sept-Îles. When she arrived at Dorval airport, the Complainant was instructed to drive her to a home. Claire Jourdain refused; she wanted to stay at the hotel. She spoke to Noëlla Bouchard on the telephone. Following this conversation, Claire Jourdain asked the Complainant to drive her to Noëlla Bouchard's office. Along the way, Claire Jourdain disclosed to the Complainant what Noëlla Bouchard had said to her; she had apparently said that her band council was incompetent and that her taxes were paying for all the services. Claire Jourdain met with regional director Claude Paradis and Dr. Lambert, and was given permission to stay at the hotel.

[14] Asked to describe what she meant by paternalism, the witness explained: (page 49)

[Translation]

"Management treated us like children, never had confidence in us, watched over everything we did, the work we did. We were harassed constantly, such as: Is she really there? Is she doing her job well? You know, lack of confidence in our work."

[15] The witness added that she felt humiliated at work because she was always treated like a child, especially since this treatment was reserved solely for the native drivers/escorts/interpreters.

[16] She reported the comments of supervisor Reine Parenteau as follows: (pages 56 and 57)

[Translation]

"Go with the patient, take his papers, he'll forget them ... lead the patient, don't leave him ... be very sure he gets on the bus, don't leave him until it goes." She often said, "If you don't listen to me, I'll tell Noëlla at the next meeting, you'll hear about it." It was always threats ... you know, I said to myself: "Hey, we're all adults here, there's no need to treat us like children. You came to say to yourself: If we had been non-natives, would Mrs. Parenteau have treated us like that."

[17] After much thought, the witness told that she and a colleague decided to file a verbal complaint against Reine Parenteau. On May 2, 1994, they went to Noëlla Bouchard's office to inform her that the atmosphere had deteriorated since Reine Parenteau's arrival as supervisor and they no longer wanted to work under her because she continually harassed them by treating them like children. Noëlla Bouchard listened to their grievances and then called them into her office in the afternoon in the presence of Reine Parenteau.

[18] At that meeting, the witness said she repeated the same accusations in Reine Parenteau's presence. The latter replied that she did not understand, that she thought she handled treated her staff with kid gloves, that perhaps she would benefit from a course on the Indian perspective. She apparently added that she thought she was at the same "beat" as her staff.

[19] The witness said that right away she felt Noëlla Bouchard was siding with her supervisor. She clearly stated that Reine Parenteau would never leave her position and added: "You're not in a band council here."

[20] On May 9, 1994, a meeting took place with manager Francine Buckell, and with Louis Germain from Human Resources and Claude Paradis. The Complainant was accompanied

by her union representative, Normand Marchand. These same individuals met again on May 24, 1994. They listened to her grievances and Francine Buckell suggested that a conciliator be brought in. Jeanne-d'Arc Vollant refused. The witness testified that, at a staff meeting held June 27, 1994, Noëlla Bouchard told her that in future, her services would be required only twenty (20) hours a week.

[21] On September 27, 1994, the Complainant said she sent a letter to Johanne Poulin, director of Human Resources at Health Canada (Exhibit C-8). Essentially, this letter was intended as a formal accusation against Noëlla Bouchard, and is translated as follows (Exhibit C-8 – page 4, paragraph 4):

[Translation]

"We can assert today that the real problem in our sector arises from a racist ideology towards natives generally and specifically against the native employees of the Patient Services sector where we work."

[22] The Complainant also maintained that the racism took the form of speech, gestures and a paternalistic attitude. She then added, specifically with regard to Noëlla Bouchard (Exhibit C-8, page 5, paragraph 3):

[Translation]

"Mrs. Bouchard practises racial discrimination subtly both in speech and in attitude attacking our dignity and our respect for our peoples."

[23] On September 28, 1994, Jeanne-d'Arc Vollant, as stated in her letter of September 27, 1994, sent a letter to the director of Human Resources. She alleged having been the victim of harassment because of the reduction of her hours of work ordered by Noëlla Bouchard. She demanded that her hours of work be maintained and that she be separated physically and hierarchically from Noëlla Bouchard and Reine Parenteau.

[24] After receiving this correspondence, a copy of which had been forwarded to the Minister of Health, the regional director, Claude Paradis, was appointed to conduct an inquiry headed by Don Murray and France Dansereau. This inquiry began October 6, 1994, and a report was filed February 15, 1995 (Exhibit C-10).

[25] During the inquiry, a meeting was held with Jeanne-d'Arc Vollant and her union representative. In her view, the inquiry did not produce the expected findings because it did not focus on the racism and harassment of which she and her colleagues were victims.

[26] Disappointed in the findings of this inquiry report, Jeanne-d'Arc Vollant filed a complaint on June 11, 1997, alleging that her employer had discriminated against her in refusing to maintain her employment because of her native ethnic origin (Exhibit C-3).

[27] To support this complaint, Jeanne-d'Arc Vollant produced a memorandum of March 29, 1995, to all driver/escort/interpreter staff (Exhibit C-11) from Noëlla Bouchard. It instructed drivers/escorts/interpreters to inform the supervisor of future appointments of patients. The memorandum also stated that failure to follow the instruction constituted insubordination likely to lead to disciplinary action.

[28] It further stated that as of May 18, 1995, the right of driver/escort/interpreter staff to make long-distance calls on the telephones provided to them was being withdrawn. According to the Complainant, only the staff in her sector was deprived of this prerogative.

[29] The witness testified that at some point she could not pinpoint the regional director, Claude Paradis, had informed all Patient Services staff that the Department of Health wanted these services to be taken over by native communities. At that point, according to the witness, this takeover had already taken place in some communities and was being administered by a native organization, Développement Mamit Inuat Inc. (Mamit). If the takeover of Patient Services became a reality, it would mean job losses.

[30] Jeanne-d'Arc Vollant remembered that in July 1995, she learned that the native communities concerned were seriously considering taking over Patient Services in Montreal and having them managed by a native organization. Jeanne-d'Arc Vollant decided she could create the native organization likely to obtain the Patient Services management contract. She told the regional director, Claude Paradis, and his right-hand man, Richard Legault, of her plan, and asked for their support to obtain a future grant from Sciences Technologies. Claude Paradis and Richard Legault apparently asked Sciences Technologies to grant her financial assistance because she had the necessary qualities to run the management of Patient Services.

[31] The native communities concerned agreed to take over Montreal Patient Services. A technical committee, composed of Michel Paul, Gilbert Courtois, Francine Buckell, all natives, and Chantal Renaud, was entrusted with choosing the manager.

[32] The Complainant filed an offer of services. The technical committee accepted Mamit's candidacy with a takeover April 1, 1996. Jeanne-d'Arc Vollant expected to be hired by Mamit. In fact, the director of Mamit, Pierre Benjamin, interviewed all driver/escort/interpreter staff of Patient Services. The Complainant noted that her interview took place on March 27, 1996, at her employer's office. She remembered that Pierre Benjamin had told her he could not hire her because she was too qualified and apparently added nothing further. Jeanne-d'Arc Vollant testified that on May 13, 1996, in a telephone conversation with her sister, the latter told her that Pierre Benjamin had refused to hire her because he had been under pressure from Health Canada owing to a complaint of racism she had made against her employer and two employees.

[33] On March 7, 1996, Jeanne-d'Arc Vollant was informed that her services would no longer be required as of April 1, 1996. Jeanne-d'Arc Vollant met with Mrs. Beaulieu of Health Canada, who apparently informed her that she had twenty-four (24) hours to notify her employer of her decision to either leave her job with a separation incentive, or remain employed as a surplus employee starting April 1, 1996. Owing to the short time she was given to make her decision known, the Complainant called on the services of a lawyer. According to the witness, a meeting

was held in the days that followed. Accompanied by her lawyer, she met with Mrs. Chagnon on April 22, 1996. The witness was convinced that Mrs. Chagnon never offered her another job.

[34] After this meeting, Jeanne-d'Arc Vollant was informed that her surplus status would end October 30, 1996. She left her job May 31, 1996, and received the related separation incentive.

[35] Upon termination of her employment, Jeanne-d'Arc Vollant was disappointed by the turn of events. She seethed inwardly to note that the filing of a complaint of racism against Health Canada and its employees had cost her her job. In her view, these employees were continuing to serve natives when they did not like natives. She did not understand why no one had listened to her or believed her.

[36] In an attempt to overcome her frustration, she decided to visit the native communities of Colorado and Arizona to learn more about the spiritual rites of these peoples. She stayed in the communities of these American states from November 1996 to April 1997, from December 1997 to April 1998, then from January 1999 to April 1999 and from January 2000 to April 2000.

[37] Eventually, the Complainant acknowledged that she had not worked, nor taken any steps to find other employment.

[38] For the analysis of the pecuniary damages she suffered, the Complainant filed a statement of her income for the years 1990 to 1997, inclusive. She asked the Tribunal to order Health Canada to provide her with forty (40) hours/week of work similar to what she had done, and payment of all her lost wages since losing her job. She also demanded, by way of moral damages, payment of a sum of twenty thousand dollars (\$20,000) from each of the Respondents and publication of a letter of apology in Health Canada's internal magazine.

[39] In cross-examination, the Complainant changed part of her testimony. She stated that, at the meetings prior to her verbal complaint of May 2, 1994, both she and her colleagues had often complained about Reine Parenteau's paternalistic attitude.

[40] Asked to define what she meant by perfectionism and paternalism, the Complainant answered: (page 231)

[Translation]

"To me, perfectionist is when you expect so much from the people who work for you, you have no confidence in them; you follow their every move, you watch everything they do, you try to control them. You're such a perfectionist that you become paternalistic because you have no confidence."

B. Alphonse Grégoire

[41] Alphonse Grégoire is a Montagnais from Schefferville, a native of Sept-Îles, Mani-Utenam. He is the father of a son born in 1980, who suffered from a heart defect and died in 1996. In the 1990s, he used Patient Services many times with his son, who he accompanied to Montreal for medical treatment at Sainte-Justine Hospital.

[42] The witness had fond memories of driver/escort/interpreter Jeanne-d'Arc Vollant. He was very grateful to her, especially since, being Montagnais, she interpreted for him.

[43] Alphonse Grégoire remembered that he had problems obtaining the taxi service and discount coupons he was to be provided. He had to pay the expenses and then get reimbursed after a lengthy wait. These problems caused heated discussions with the managers, notably Noëlla Bouchard. He remembered that she was very strict and very authoritarian. During one discussion to obtain reimbursement of taxi expenses, she apparently told him he was travelling thanks to her taxes.

[44] Alphonse Grégoire remembered that while he was waiting for a heart transplant for his son, Noëlla Bouchard denied him the right to rent an apartment. It took intervention from his band council and Dr. Charles-André Lambert, director of Health Services, to settle the problem.

[45] The witness said he felt put down, treated like an animal that must obey, do what it is told.

C. Pierre Benjamin

[46] Pierre Benjamin is a native of Mistassini. He belongs to the Betsiamites Band. He holds a bachelor's degree in Education, a certificate in Archaeology, a master's degree in Project Management. He taught high-school mathematics for two (2) years and then became a director of economic development. He was managing director of Mamit from 1993 to 1996.

[47] Pierre Benjamin testified that Mamit, founded in 1988 or 1989, is a corporation created by the Mingan, Natashquan, Romaine and Saint-Augustin band chiefs. The purpose of this corporation was to manage social programs and health services programs in these communities. During 1994, these band chiefs spoke to him about the possibility of native communities taking over Montreal Patient Services. He was also informed of this by Claude Paradis and Richard Legault at meetings in Montreal.

[48] The witness knew Claude Paradis very well, who was then regional director of Medical Services at Health Canada. He got to know him when he was the head of education at Indian Affairs. As for Richard Legault, Claude Paradis' assistant, he had not known him previously.

[49] In fall 1995, the band chiefs decided, after much thought, to take over Patients Services in Montreal and asked Mamit Inuat to submit an offer of services.

[50] According to the witness, Claude Paradis strongly suggested to him that he submit an offer of services on behalf of Mamit because of the experience acquired from managing a similar program in Quebec City. He added: (page 483)

[Translation]

"He (Claude Paradis) strongly recommended not transferring Mrs. Vollant's file to Mamit Inuat, so, not to hire her as part of the program transfer."

[51] Pierre Benjamin said that this recommendation was based on the fact that Jeanne-d'Arc Vollant had filed a complaint against Health Canada of negative treatment towards the native employees working within the organization.

[52] Pierre Benjamin recalled that Mamit had filed an offer of services in January 1996 and Devina Copeau, manager of Mamit in Quebec City, had steered the file. Mamit's application had been accepted provided it take over management of the program starting April 1, 1996.

[53] Barely a few days before the transfer of Patient Services to Mamit was signed, Pierre Benjamin had the driver/escort/interpreter staff undergo selection interviews at Health Canada's Montreal offices. He remembered that before these meetings with staff, he met with Noëlla Bouchard and Francine Buckell at the latter's office. Both said not to hire Jeanne-d'Arc Vollant.

[54] Pierre Benjamin met with Jeanne-d'Arc Vollant to inform her that she would not be hired by Mamit because she was overqualified.

[55] The witness said he recalled a meeting with the Complainant's sister in May 1996, in a restaurant. She asked him why Mamit had refused to hire her sister. He apparently answered that it had followed the recommendations of Health Canada officials who resented her for filing a complaint. He said that otherwise, Mamit would not have obtained the contract to manage the transfer of Patient Services in Montreal.

D. Marie-Anne Cheezo

[56] Marie-Anne Cheezo is an Algonquin from the Lac Simon Band in Abitibi. She grew up in her community. After completing high school, she settled in Montreal in 1989 to continue her studies and earn a bachelor's degree in Social Sciences. From 1989 to 1993, Health Canada hired her services as a driver/escort/interpreter on call, mostly on weekends and during the summer. From November 1992 to spring 1993, she held the position of eligibility officer at Non Insured Health Benefits.

[57] The witness testified that the offices of Non Insured Health Benefits were next to those of Patient Services and separated only by screens. Thus, according to her, it was very easy for each service to hear the other's conversations.

[58] While she was working at Non Insured Health Benefits, she remembered having heard Reine Parenteau, who was at Patient Services, make the following comments about natives: (page 600)

[Translation]

"Ah, natives, they can't do anything because they can't look after themselves. They are, I don't know, profiteers, you have to treat them like children."

[59] She also resented Reine Parenteau for not having confidence in her and for exercising so much control that she felt humiliated and demeaned.

[60] In cross-examination, the witness claimed that she was the only one who heard Reine Parenteau's comments because her colleagues were too far away.

[61] She also maintained that H  l  ne Raymond, who worked near Reine Parenteau, could not have heard Reine's comments because she was away.

[62] She never complained about the situation to either H  l  ne Raymond, her cousin, or to her superior, Francine Buckell, because she did not know how to go about it and she had other, more important concerns. She apparently breathed a word of it to Jeanne-d'Arc Vollant alone.

E. Claire Jourdain

[63] Claire Jourdain is of Montagnais origin, a member of the Mani-Utenam Band.

[64] She used the patient services offered at Health Canada in Montreal for many years; first, for her daughter from 1958 to 1978, and then, since 1990, for her grandson Tshapi, who had serious heart problems.

[65] In March 1994, Claire Jourdain was to travel to Montreal with her grandson for tests to check his heart. In the past, while staying in Montreal, the patient's escort was accommodated and fed in a home reserved by Health Canada. She disliked this policy because she cohabited with other people, which deprived her of any privacy, and also because the food left something to be desired. Before she left Sept-Îles, the health services of her community had informed her that in future she could stay at the hotel. When she arrived at Dorval airport, her driver/escort/interpreter, Jeanne-d'Arc Vollant, informed her she was to go to a home.

[66] Disagreeing with this decision, she called the Health Canada office on Jeanne-d'Arc Vollant's cellular telephone. Reine Parenteau took the call and confirmed to the witness that the rule had to be respected. She demanded to speak to Noëlla Bouchard. The tenor of the conversation was as follows: (page 954-955)

[Translation]

"Noëlla Bouchard said to me: "The agreements are that you will stay in homes when there is hospitalization, those are the rules." I said: "I don't give a damn about the rules, I don't want to go to a home, I've had enough of homes, I definitely want to go to the hotel." She told me: "No." I said: "But I was clearly told when I left Sept-Îles that I could stay where I wanted." She said: "It's not my fault the Sept-Îles Band Councils are incompetent." I said: "I don't agree, and I'm coming to the office."

[67] The witness then demanded that Jeanne-d'Arc Vollant drive her to the offices of Health Canada, where she was seen by Reine Parenteau. She met with Noëlla Bouchard in the hallway, without Jeanne-d'Arc Vollant present, and their exchange went as follows: (page 955)

[Translation]

"I said: "What's this about, we have agreements." She said: "No, you people come to Montreal to wander around, to go into the stores with the taxes we pay." I was

insulted by that. I said: "No, Madam, because my husband pays taxes and so do I, I pay taxes. I didn't come here to wander around, and go into the stores. I leave the home where I'm staying at 7:30 in the morning and I leave the hospital at 9:00 at night, so I don't know the stores."

[68] Claire Jourdain asked to meet with Claude Paradis, regional director of Medical Services, whom she knew well. They met in the cafeteria, and Claude Paradis listened to Claire Jourdain's grievances and her demand for an apology from Noëlla Bouchard. Claude Paradis asked her to calm down and they went to the office of Dr. Charles-André Lambert, director of Native Health Services. The witness recalled that after having being informed of the facts, Dr. Lambert called in Noëlla Bouchard and asked her to apologize, but she refused. He instructed Noëlla Bouchard to put the witness up at the hotel and to drive her in a taxi.

[69] Claire Jourdain complained about her treatment as follows: (page 960-961)

[Translation]

"... When I come here, I feel so put down that we are treated almost like, I don't know what. I mean, we're not responsible for anything, we're not able to organize, we're not able to do anything. It's always the Department of Indian Affairs that decides, it's always Health that decides, it's never us.... Of course, I'm irresponsible, listen, an Amerindian. Damned paternalism, the Department of Indian Affairs always there telling us what to do as if we were babies."

[70] As for what she felt, she continued: (page 362-363)

[Translation]

"Put down, Sir, put down, very put down even today, I feel like that because, you see it hurts to be told you're wandering around with taxes. Taxes, charming taxes. I can't tolerate Indian Affairs being able to have staff that can say that to Indians who look after Indians."

[71] After this occasion, Claire Jourdain testified that she did not file a written complaint against Health Canada. On returning to Sept-Îles, she testified that she complained verbally to her daughter, Luce Jourdain, then her band council's director of Health and Social Services. She

did not know whether the band council acted on her complaint and said she had not checked whether this complaint had been followed up.

[72] Claire Jourdain also testified that on two (2) occasions, during a stay in Montreal that she placed in 1996, the Health Canada managers did not deliver her return plane tickets to Sept-Îles and she still had not been reimbursed for one of these tickets.

[73] In her testimony of October 23, 2000, she said she had at home a letter of apology from Claude Paradis for the poor services she had received. She had promised to send a copy of this letter to the Commission's lawyer. During arguments, on November 7 and 8, 2000, this document could not be produced because the witness had not carried out her promise.

III. Evidence of the Respondent Health Canada

A. Francine Buckell

[74] Francine Buckell is a Montagnais Innu from Mashteuiateh. She began her career at Health Canada in 1984 where she successively worked as assistant field agent of the National Native Alcohol and Drug Abuse Program, director of Employee Assistance Services, and manager of Non Insured Health Benefits from 1992 to 2000.

[75] The witness explained that the Non Insured Health Benefits she managed encompassed Patient Services, which provide transportation, accommodation, interpretation, escort services for native clients travelling to Montreal for health reasons. The staff assigned to this service included persons of native origin, notably to guarantee quality interpretation or escort services.

[76] Patient Services employed drivers/escorts/interpreters who drove clients to appointments or to the home, accompanied clients to assist them if need be, and also acted as interpreter if necessary.

[77] These people worked under the direction of supervisors who, based on the information sent by the health services of native communities, were to co-ordinate appointments, and plan the need for transportation, accommodation and interpretation services. The supervisors worked under the nursing supervisor, who reported to the link nurse and the social worker. The witness reported to the director of Health, and the regional director of Medical Services oversaw everything.

[78] In May 1994, Noëlla Bouchard informed Francine Buckell that Jeanne-d'Arc Vollant and Carmen McLean had complained to her about Reine Parenteau. They seemed resentful of the way she did her job as supervisor, of issuing instructions. The witness stated that she had been stunned by this revelation as she felt that contentment reigned in the work team and she had had no sense of what was going on.

[79] Prior to Jeanne-d'Arc Vollant and Carmen McLean filing the complaint, the witness recalled no event or incident to show that the Complainants had been the victims of discrimination because of their native status, and she explained: (page 713)

[Translation]

"Until the day of the crisis, Sir, if I can call it that, there was nothing to indicate to me, in what either Mrs. Bouchard or Mrs. Parenteau said, that there was racism, that there were hateful remarks, that there was anything offensive. Because I can assure you, Sir, that I wouldn't have tolerated it. I think I am known for that, too; I have always defended the rights of natives. I went to work for Health Canada precisely to be able to work over a wider area, if I may say, to become more widely involved than in just my community."

[80] The witness also disclosed that she had never received complaints from clients about racist or discriminatory comments by Reine Parenteau and Noëlla Bouchard. Client complaints were limited to changes in instructions or shortcomings in the service received.

[81] The witness met with the Complainant and Carmen McLean to hear their grievances. They repeated that they no longer wanted to work with Reine Parenteau; they disputed her work

methods and the way she issued her instructions to them. They demanded that their supervisor be transferred to another service. Francine Buckell met with Reine Parenteau to hear her version of the facts. The latter acknowledged that she may have done upsetting things, but demanded explanations so she could make amends, if necessary. However, she maintained that her job as supervisor obliged her to issue instructions to ensure the quality of the services. Moreover, she refused to be transferred to another service, claiming she was happy in her current position.

[82] Francine Buckell turned to the labour relations officer and the union representative to resolve the problem. It was decided to offer the Complainants mediation by a mediator of their choice, but they refused.

[83] The witness went to her superior, Dr. Charles-André Lambert, director of Health Services. Given the seriousness of the situation, which risked inflaming labour relations, which had always been excellent, they turned to the regional director of Medical Services, Claude Paradis. They agreed to again offer the Complainants mediation, but were met with a second refusal. It was then decided to conduct an internal inquiry.

[84] The inquiry committee filed its report on February 17, 1995 (Exhibit C-10), and found as followings: (page 4)

[Translation]

"In the opinion of the investigators, there is no harassment according to the Treasury Board definition, which is cited at the start of this document. However, the staff rotation in November was a triggering factor, which pointed up the lack of consistency in the management style of the two units. It would be desirable for certain management practices to be reviewed and corrected if necessary, in order to avoid a further deterioration of the situation."

[85] The witness said she had read and received instructions from Claude Paradis to act on this. With the help of her staff, the witness prepared and implemented a policies and procedures manual for Patient Services employees.

[86] Francine Buckell was asked to explain why Jeanne-d'Arc Vollant's hours of work were reduced in June 1994. She participated in the decision with Noëlla Bouchard. She corroborated the reasons given by Noëlla Bouchard, so there is no reason to set them out.

[87] She explained that Jeanne-d'Arc Vollant was a unionized employee and that she had not thought it appropriate to formulate a grievance following the change in her working conditions.

[88] At the time of the administrative transfer of Patient Services to the Assembly of First Nations of Quebec, the witness testified that as a Health Canada representative, she sat on the technical committee charged with recommending the native organization capable of managing Patient Services.

[89] The witness said she never pressured the members of this committee to reject the candidacy of Jeanne-d'Arc Vollant. She also maintained that no one at Health Canada had asked her to make sure the management contract for Patient Services not be awarded to Jeanne-d'Arc Vollant.

[90] The witness admitted that at the time the management contract for Patient Services was awarded to Mamit, she knew its representative, Pierre Benjamin, from having met him several times before. She maintained, however, that she could not possibly have met him in late March 1996, because she was on holiday.

[91] Francine Buckell filed a floor plan of Non Insured Health Benefits at Health Canada (Exhibit SC-11).

[92] The witness described the premises with the aid of this plan. She said that the area was enclosed by means of screens and divided into two (2) sections also separated by partitions six (6) to seven (7) feet high with two (2) means of access. One section housed Non Insured Health Benefits, and the other was reserved for Patient Services.

[93] In the section occupied by Patient Services were the offices of the supervisors, the link nurse, the social services consultant and the drivers/escorts/interpreters room. Filing cabinets can be seen up against the partition on the Non Insured Health Benefits side. Also, this room is separated from the other offices by screens broken by an access.

[94] The section occupied by Non Insured Health Benefits consisted of six (6) desks with computers for the eligibility officers of Non Insured Health Benefits. Bookcases can also be seen against the wall on the Patient Services side.

[95] The witness also explained that it is unlikely conversations in one section are heard in the other, unless they are very loud.

B. Claude Paradis

[96] Now retired, Claude Paradis was, from July 1982 to January 1996, regional director of Native Medical Services at Health Canada.

[97] He said that Health Canada, through one of its programs called the Medical Services Branch, provided health services to natives throughout the province of Quebec, except for Cree and Inuit, who were covered by the James Bay Agreement and were therefore under provincial jurisdiction when it came to health care.

[98] The medical services program provided health services in each native community through health centres whose nurses dispensed the front-line services. Attached to these health centres were native staff who provided clerical, translation, custodial and other services. The service as a whole constituted what were appropriately called insured services.

[99] The medical services program also covered non insured health benefits.

[100] The witness recalled an incident that took place at a meeting with all staff in 1990; discussion surrounded the transfer of money arising from the administrative transfer of native

medical services. One employee, Danièle Clément, commented that the money might be used to buy weapons. At the time, the Oka crisis was unfolding and an employee present at the meeting, Tom Canatonquin, was a native from Oka. The witness told to the speaker that the money would not be used for that purpose and not to start baseless rumours.

[101] Asked whether he had issued written instructions that such comments not be repeated, the witness said: (page 941)

[Translation]

"If I may express a personal opinion, it seemed so insignificant to me that I thought the best thing was not to say nothing further because it was insignificant. It was irrelevant, it had nothing to do with anything true, it was maybe just emotional on her part, that's all. No, I didn't write a memo."

[102] At a meeting in his office in early May 1994, Jeanne-d'Arc Vollant submitted to him a document in which she filed a complaint against Reine Parenteau disputing her work methods, her attitude towards the employees she supervised, and informing him of her refusal to continue to work with her (Exhibit C-18). This was the first time the Complainant had informed him that she was experiencing problems in her workplace.

[103] Claude Paradis stated that, given the seriousness of the complaint, he turned the matter over to the manager of Health Services, Francine Buckell. He was aware that the offer had been made to the Complainant to bring in a mediator, an option she refused.

[104] On September 15, 1994, the witness informed the Complainant that in view of her refusal to agree to mediation, he had decided to establish a committee to inquire into the validity of her grievances. The committee was made up of France Dansereau from the Health Protection Branch and Ronald Murray from the Public Service Commission (Exhibit SC-4). These individuals had been appointed by the Public Service Commission.

[105] On October 13, 1994, the regional director of Human Resources at Health Canada informed the Complainant that she could tell the committee of inquiry which areas she wanted investigated and who to question. He also explained to her that the committee of inquiry had the mandate "to make findings for the taking of corrective measures, if necessary" [translation]. She was also informed that during the period of inquiry, she would no longer report to Reine Parenteau.

[106] The witness met with the members of the committee of inquiry and submitted to them Jeanne-d'Arc Vollant's complaint and the policy manual on personal harassment at the workplace. The committee of inquiry filed its report on February 17, 1995. After this report was filed, the witness met with Francine Buckell to ask her to establish guidelines for acting on the findings of the committee of inquiry.

[107] Claude Paradis revealed that he had little contact with clients. He sometimes had occasion to receive complaints from patients who were annoyed because they had not been picked up at the airport or bus terminal. He remembered one incident involving Claire Jourdain whom he knew well. The witness was in the cafeteria of the Complexe Guy Favreau with Dr. Charles-André Lambert, director of Health Services. Claire Jourdain arrived; she was in a bad mood. On arriving at Dorval airport with her grandson, who had come for treatment, no one was there to pick her up. The witness asked Claire Jourdain to calm down and went with her to meet with Noëlla Bouchard to get an explanation. Noëlla Bouchard said the Health Centre in Sept-Îles had not told her Claire Jourdain was coming. Claude Paradis was categorical: At that meeting, Noëlla Bouchard made no offensive remarks about natives. Claire Jourdain did not complain to him about Noëlla Bouchard's attitude. Rather, she was frustrated about the mistake that had occurred.

[108] The witness testified that beginning in 1990, medical services could be transferred administratively to native communities, and this information was passed on to the various native communities and organizations to determine their interest in taking over these services. He recalled that Jeanne-d'Arc Vollant had asked him his opinion about her chances of success if she

were to submit her candidacy. He explained to her that she would have to demonstrate her ability to provide the service with adequate physical resources and the relevant qualified staff. She would also have to obtain official support, from the native bands or associations interested in dispensing the service.

[109] Claude Paradis said he met Pierre Benjamin when he was working as an education counsellor on the Betsiamites reserve and saw him fairly regularly thereafter.

[110] At the time of the transfer of Patient Services on April 1, 1996, the witness had been retired since January 1996. He acknowledged, however, that he may have discussed the subject with Pierre Benjamin. Asked whether he had promised Pierre Benjamin that Mamit would obtain the contract for the administrative transfer of medical care, he answered: (page 902)

[Translation]

"You know, I learned one thing, I worked with natives for 25 to 27 years. I very quickly learned one thing, which is that you never say yes when you aren't sure you'll be able to deliver the goods and, in that case, that's even more true than any other case since I left; I would never have allowed myself say something like that, besides the fact that I never did it. Because it's very difficult to become accepted by natives; and once you are accepted, you can't make blunders and be rejected because the job is done in a climate of trust. If there's no trust, you can't accomplish much."

[111] Claude Paradis categorically denied having approached the technical committee to promote the candidacy of Mamit, or Pierre Benjamin to keep him from retaining the services of Jeanne-d'Arc Vollant.

[112] During the years when he was regional director of Medical Services, the witness said that he never received complaints attributing to Noëlla Bouchard and Reine Parenteau offensive or injurious comments about natives, other than that of Jeanne-d'Arc Vollant.

C. Michel Paul

[113] Michel Paul is a native, a registered member of the Kitigan Zibi reserve of Maniwaki. In addition to being a registered nurse of the Ordre des infirmiers et infirmières du Québec, he has university training in gerontology.

[114] Administratively, he holds a bachelor's degree in Business Administration and a master's degree in Health Services Administration. Michel Paul has been the director of client care and services in a nursing home for seniors for five (5) years. He is also co-owner of a firm of consultants in health services administration, especially to native organizations. The consultant's role is to work with native communities on the programs governed by government policies and to develop community health programs.

[115] In 1994-1995, Michel Paul was employed by the First Nations of Quebec and Labrador Health and Social Services Commission as health co-ordinator. The first mission of this commission is to promote the well-being of First Nations, notably in taking over matters relating to health and social services. During the fall of 1995, the Assembly of Chiefs of the First Nations of Quebec and Labrador gave the First Nations of Quebec and Labrador Health and Social Services Commission a mandate to inform native organizations, notably tribal councils and band councils, that this commission was going to prepare a call for tenders for the administrative transfer of Health Canada's Patient Services to native organizations (Exhibit SC-16).

[116] As health co-ordinator, he was mandated by the board of directors of the First Nations Health and Social Services Commission to set up a technical committee charged with evaluating the proposals received from native organizations. This technical evaluation committee was composed of Michel Paul, chairman, Gilbert Courtois, appointed by the board of directors of the First Nations of Quebec and Labrador Health and Social Services Commission, senior Health Canada manager Francine Buckell, and Chantal Renaud, co-ordinator of Patient Services at Health Canada. The technical committee was to develop a grid for evaluating the proposals based on criteria and a selection interview questionnaire. It was to study the proposals received, the selection interviews and submit a recommendation to the authorities concerned

(Exhibit SC-7). The committee prepared the evaluation criteria (Exhibit SC-18) and the interview questionnaire (Exhibit SC-19). The technical committee also developed weighting criteria for evaluating the results (Exhibit SC-20).

[117] The technical committee considered four (4) applicants: Native Friendship Centre of Montreal, Jeanne-d'Arc Vollant and Carmen McLean, Kanesatake Mobile Service, and Mamit.

[118] All the candidacies were analysed and the technical committee unanimously approved that of Mamit, which had obtained the highest rating based on the criteria and weighting (Exhibit SC-20).

[119] Michel Paul explained the technical committee's choice of Mamit: (page 1034-1035)

[Translation]

"... We awarded the contract to the firm Mamit Inuat, a native organization that, among other things, also had management expertise in this service. It already had a mandate to manage Patient Services for the North Shore region. Its management philosophy already fit well with what we were looking for. And it had some creditworthiness as an organization with Health Canada. The proposal submitted also met the standards. Matters governing the particular standards of case management also were something the firm Mamit Inuat already had in terms of being up to standard, in terms of the confidentiality of records, in terms of transportation, notably because this was an element associated with Patient Services, security standards.

So, this kind of meant it was the organization that, in terms of the results presented and the scale we had adopted, was the one that presented to the committee, I would say, the best result in terms of the scales and the weighting we were using."

[120] Each bidder was informed of the results (Exhibit SC-6). This recommendation was passed on to the First Nations of Quebec and Labrador Health and Social Services Commission (Exhibit SC-22) which approved it. The Assembly of First Nations of Quebec in turn approved

this recommendation and asked the Medical Services Branch for the Quebec region to conclude a contribution agreement with Mamit by no later than April 1, 1996.

[121] Michel Paul explained that at no time did Francine Buckell intervene in the selection process to prevent Jeanne-d'Arc Vollant's candidacy from being accepted.

D. Chantal Renaud

[122] A graduate nurse, Chantal Renaud began work, in August 1999, at Health Canada as regional co-ordinator of the First Nations and Inuit Home and Community Care Program.

[123] Previously, she was link nurse with the Non Insured Health Benefits program at Health Canada. She explained that the link nurse co-ordinates the health services dispensed to patients when they come to Montreal. She must obtain information from the health professionals in native communities in preparation for the patient's visit to see the health professional in Montreal and provide follow-up information to the nurses in the communities. She works with the supervisors and with the drivers/escorts/interpreters to co-ordinate the appointments.

[124] Chantal Renaud testified that she was a member of the technical committee charged with analysing the bids for the administrative transfer of Patient Services to native communities. She said that at no time did Francine Buckell or anyone else at Health Canada intervene in the selection process to prevent the committee from recommending the candidacy of Jeanne-d'Arc Vollant.

[125] The witness knew Pierre Benjamin from having met him in the Montreal offices of Health Canada. She was aware that Pierre Benjamin had conducted personnel selection interviews with the aid of a consultant. When he came to Montreal to sign the agreement for the administrative transfer of Patient Services, she met him in Francine Buckell's office along with Marie-Line Roy. She remembered that Francine Buckell was on holiday and Marie-Line Roy was replacing her. Pierre Benjamin said that he had made an offer of employment to all employees except Jeanne-d'Arc Vollant because she was overqualified.

E. Richard Legault

[126] Richard Legault is an employee of Health Canada. Since May 1, 1996, he has held the position of regional director of the Indian and Inuit Health Services Branch for Manitoba. He previously held the position in Montreal for three-and-a-half (3½) years.

[127] The witness testified that he had spoken with the Complainant when she was considering bidding for the administrative transfer of Patient Services. He told her that the experience gained, particularly at the operational level, could be a considerable asset.

[128] Richard Legault disclosed that he knew Pierre Benjamin, Mamit's representative, very well from having worked alongside him a number of times during the negotiation of existing agreements between Health Canada and Mamit. He categorically denied having promised Pierre Benjamin that the contribution agreement would be awarded to Mamit if it promised not to hire Jeanne-d'Arc Vollant.

[129] The witness also explained that, at the time the contribution agreement was signed, Francine Buckell was on holiday; he had signed the agreement.

[130] Asked to give his version of the events at the meeting with Jeanne-d'Arc Vollant and her lawyer, he corroborated in all respects the testimony of Pierrette Chagnon.

F. Marie-Line Roy

[131] Marie-Line Roy is employed by Health Canada in Ottawa, as manager of inter-regional liaison for Non Insured Health Benefits.

[132] Previously, that is, from 1988 to 1997, she was responsible, at Health Canada, Montreal, for overseeing the agreements of Non Insured Health Benefits.

[133] Francine Buckell submitted Mamit's proposal to her so that she could draft the contribution agreement (Exhibit SC-24). At the instruction of Health Canada, this agreement was to be signed before April 1, 1996.

[134] On March 27, 1996, there was a meeting at Health Canada, Montreal, to sign the agreement. Pierre Benjamin represented Mamit and Richard Legault affixed his signature in the absence of Francine Buckell, who was on holiday. At that time, nothing was said about Jeanne-d'Arc Vollant.

[135] It was also Marie-Line Roy's job to oversee operations. She was to negotiate with Pierre Benjamin the possible transfer of equipment and staff, if Mamit so wished.

[136] Together with a consultant, Pierre Benjamin interviewed the staff and then notified Marie-Line Roy that he was hiring all existing staff except Jeanne d'Arc Vollant because she was overqualified.

[137] Marie-Line Roy asked Pierre Benjamin if he had obtained references. He said he had obtained no references from Health Canada and explained: (Volume 10, page 1248-1249)

[Translation]

"I looked after that, I already did my references with the Lower North Shore communities, and Mrs. Vollant was not well thought of."

[138] Marie Line-Roy stated that at no time, to her knowledge, had Health Canada insisted that Mamit not hire Jeanne-d'Arc Vollant.

G. Pierrette Chagnon

[139] In September 1995, Pierrette Chagnon was regional director of Human Resources for Health Canada, Quebec region.

[140] She was also president of the Employment Secretariat, which was to undertake a massive restructuring in the Public Service following the budget cuts of 1995 to 1998. It was an inter-departmental agency set up to outplace, with the co-operation of the unions, surplus employees wishing to remain in the Public Service. This initiative proved very fruitful as, in all departments in the Quebec region, only one person of surplus status could not be outplaced.

[141] Pierrette Chagnon testified that she had intervened personally when a particular problem arose concerning the employment of Jeanne-d'Arc Vollant. In the autumn of 1995, the employees assigned to Patient Services were informed that the Government of Canada was considering, in the near future, [turning over] patient medical services to the First Nations. Job losses were therefore likely to occur. In such circumstances, temporary employees are dismissed at the end of the contract and permanent employees are considered surplus. Employees who become surplus must be informed of this within a reasonable period of time to allow them to exercise their rights according to the Work Force Adjustment Directive (Exhibit SC-25).

[142] Thus, on March 7, 1996, Jeanne-d'Arc Vollant was informed that her services as driver/escort/interpreter would no longer be required as of April 1, 1996, and that she would have surplus status for six (6) months, i.e., until October 1, 1996 (Exhibit C-7). According to the Work Force Adjustment Directive, surplus employees have two (2) options: they can either remain with the Public Service and be outplaced to another position without loss of benefits and privileges for a period of two (2) years, or they can leave their job and receive a separation incentive equivalent to six (6) months' pay from the date on which their services are no longer required. In the case of Jeanne-d'Arc Vollant, she would remain in her job from April 1, 1996, to October 1, 1996, and if, in this period, she decided to opt for the separation incentive, it would be reduced proportional to the period that had passed.

[143] According to the letter of March 7, 1996, it was very important that the employee in question make her decision known as soon as possible. In the days following the letter of March 7, 1996, the manager handling the Complainant's file tried to reach her several times but she was not at work. It was only on March 28, 1996, that she was able to locate her and inform

her that it was becoming imperative that she make a decision and inform her of it on March 29, 1996. Jeanne-d'Arc Vollant then retained the services of a lawyer, who sent the file manager a formal notice, on April 1, 1996, disputing the validity of the request that his client make a quick decision (Exhibit C-13).

[144] The director of Human Resources then intervened personally in the matter; she tried to contact the Complainant's lawyer. She sent him a letter on April 11, 1996, informing him of the importance of settling the apparent mix-up and requesting a meeting to come to a very clear understanding of the situation.

[145] A meeting took place towards late April or early May 1996, attended by Pierrette Chagnon, Richard Legault, and Jeanne-d'Arc Vollant accompanied by her lawyer. Pierrette Chagnon again informed the Complainant of the importance of her making a decision, reminding her that, if she wanted to stay employed in the Public Service, several avenues were open, including a CR-3 clerical position at Health Canada. She made sure to inform her that as president of the Employment Secretariat, she could very well outpace her in an assistant position or in a position such as she currently held. The option of leaving the Public Service was also discussed. However, as the separation incentive would now be less owing to the time that had passed, and as the Complainant may have unintentionally misunderstood the situation, the director of Human Resources explained to her that perhaps, given the circumstances, the Deputy Minister of Health might extend her surplus status, allowing her to receive the full separation incentive.

[146] The Complainant asked for, and was given, time to think it over. A few days later, the Complainant's lawyer contacted Mr. Legault, the office director, to inform him that his client was opting for the payment of a lump sum. In the meantime, a request for an extension of surplus status had been sent to the Minister and accepted.

[147] Pierrette Chagnon acknowledged that she did not submit a written offer of employment to the Complainant pursuant to the Work Force Adjustment Directive. She claimed that, in the

circumstances, she thought it inhuman to do so and risk depriving her of her right to the separation incentive if the offer of employment was considered reasonable.

[148] On May 17, 1996, Jeanne-d'Arc Vollant was informed that her surplus status was being extended to November 30, 1996 (Exhibit C-12), and on May 31, 1996, she decided to leave the Public Service with a six (6) months' separation incentive (Exhibit C-14).

IV. Evidence of the Respondents Reine Parenteau and Noëlla Bouchard

A. Reine Parenteau

[149] Reine Parenteau has been employed at Health Canada since 1982 in Patient Services as a secretary, a clerk and, as of 1990, a supervisor working with Hélène Raymond, who held the same position.

[150] Reine Parenteau supervised the work of drivers/escorts/interpreters Jeanne-d'Arc Vollant and Frances Couchees, who served mainly clients who spoke Montagnais and Cree.

[151] Hélène Raymond oversaw the work of drivers/escorts/interpreters Carmen McLean and Annette Cheezo, who were generally assigned to clients who spoke Attikamek and Algonquin.

[152] The witnesses' job was to organize and co-ordinate the transportation and accommodation service for patients travelling from native communities to Montreal either by train, plane or motor coach, based on the information passed on by the native communities. She was to plan the work of the drivers/escorts/interpreters to ensure they were on hand when the patient arrived, took them to their appointment or their home, and drove them back to their point of origin. She was also to check and control the use of the vehicles made available to Patient Services for the transportation service.

[153] The witness estimated that until May 1994, everything was going extremely well. In her view, the whole team was working in a friendly atmosphere and staff were doing their best to

give patients quality service. She remembered that on her birthday, March 31, 1994, she received a card from Jeanne-d'Arc Vollant in which she had written: "I like you a lot." She had always had excellent relations with her.

[154] Reine Parenteau testified that on May 2, 1994, Noëlla Bouchard, her line supervisor, had called her into her office to tell her that Jeanne-d'Arc Vollant and Carmen McLean had made a complaint about her. The witness thought it was a joke, but Noëlla Bouchard told her it was serious and asked for explanations. She answered that nothing out of the usual had occurred. Her superior said that neither of these two employees wanted to work with her anymore. For the witness, this was all the more surprising as she had not overseen Carmen McLean's work since 1993.

[155] Noëlla Bouchard called the two Complainants into her office while the witness was there and they again said that they no longer wanted to work with her. Asked what had prompted their refusal to work with her, Reine Parenteau said the Complainants replied that the clients were complaining. They resented her for contacting them while they were working to check on their comings and goings and keep an eye on them.

[156] In response to these criticisms, the witness said it was normal to contact the employee to find out if she was available if needed to take another assignment. When accused of being a perfectionist, the witness replied: (page 1103)

[Translation]

"Perfectionist? I know there are two (2) ways to see it. In any case, the way I see it, that's positive. It means I'm trying to do my job as best I can in the circumstances."

[157] Reine Parenteau testified that she was upset by the Complainants' comments. She thought there was a misunderstanding. Communication had to be restored and everything done to get back on good terms. She even suggested taking a course in the Indian perspective. She said she was prepared to do her part to bring about understanding between the parties.

[158] As for the criticism of being paternalistic, the witness said that she was not familiar with the term. After consulting a dictionary, she understood that she was being accused of treating the Complainants like children, like people unable to look after themselves.

[159] Reine Parenteau stated: (page 1104-1105)

[Translation]

"But I don't think I was at all paternalistic. I did my job the way I was asked to in order to ensure a quality of services, and I didn't do it in an authoritarian way either. I did it out of a sense of collaboration, out of concern for integrity and justice so that people would be happy and content. I treated those I worked with in the same way I would want to be treated myself."

[160] The witness was asked to comment on the testimony of Marie-Anne Cheezo who asserted that she had apparently said natives cannot look after themselves; they are lazy and profiteers. Reine Parenteau maintained that she never said such things, that she had never said anything unpleasant or offensive about natives and had always treated the clients and her native colleagues with respect.

[161] The witness was asked to give her version of a reprimand she apparently directed at Jeanne-d'Arc Vollant for being late to work. The witness explained that the Complainant was doing an excellent job and that she had never had to reprimand her prior to the complaint in May 1994. After the complaint was filed, she had once reprimanded Jeanne-d'Arc Vollant, not for being late to work but rather for not telling her she was late.

[162] She admitted, however, that the filing of the complaint, while it did not change the quality of Jeanne-d'Arc Vollant's work, made relations very tense.

[163] On cross-examination by the Commission's lawyer, the witness acknowledged that she had been asked to conduct the Complainant's performance evaluation for the period of

September 1993 to October 1994 (Exhibit SC-1). However, she refused to evaluate her performance from May 2, 1994, onward for the following reasons: (page 1137)

[Translation]

"Because in view of the complaint and the tension that existed at the service and the change in Mrs. Vollant's behaviour, I'm not talking about towards the clients but towards me, I simply didn't want to, her work was satisfactory. I was aware that it was because of the circumstances, her behaviour had changed and I didn't want that to appear on her evaluation."

B. Noëlla Bouchard

[164] Noëlla Bouchard is a nurse. She started working at Health Canada in 1973. Until 1980, she provided her nursing services in the native communities at James Bay, Hudson Bay and along the Lower North Shore. In 1980, she became a nursing supervisor at Patient Services in Montreal, a position she held until July 1995 when the position was abolished. She was relocated as a nursing supervisor and assumed responsibility for the nursing staff, the management of buildings and housing in the native communities that had not yet taken over their health services.

[165] The witness said that after arriving at Patient Services, budget cuts led to a workforce reduction such that the operating budget that allowed for a driver/escort/interpreter staff of three person-years only. The term "person-year" refers to forty (40) hours/week regardless of the number of hours worked by one person. For example, two (2) people can split forty (40) hours in a week.

[166] In 1989, the driver/escort/interpreter staff consisted of Carmen McLean and Georgette Chartrand at 40 hours/week; Jeanne-d'Arc Vollant and Hélène Raymond at 20 hours/week. This staff was under the direction of a Mrs. Champagne, supervisor. She was assisted by a secretary.

[167] In December 1989, Murielle Champagne retired and Noëlla Bouchard decided to combine the position of secretary and that of supervisor to create two (2) supervisor positions

entrusted to Reine Parenteau, who was secretary, and H el ene Raymond, who left her job as driver/escort/interpreter.

[168] At the same time, Georgette Chartrand took a sabbatical year and then retired.

[169] To make up for these departures, No ella Bouchard recalled that Jeanne-d'Arc Vollant was offered 20 hours/week more work and the requirements were met with the hiring of Frances Couchees and Annette Cheezo to the tune of 20 hours/week each. Staff were hired on a freelance basis when regular staff were absent and the workload became excessive. This work team remained intact from January 1, 1990, to June 27, 1994, and was made up exclusively of personnel of native origin.

[170] Asked to explain the relevance of Patient Services, No ella Bouchard maintained that her work in native communities had taught her that the patients were timid and without any money when they arrived in Montreal. They were afraid that no one would come to get them, that they would not be looked after. They had to be reassured and given all the help they needed. The witness maintained that she was constantly concerned that the service not fall short in any way. She continually expressed her watchword to the supervisors: (page 961)

[Translation]

"When you have a referral coming, think of them as a child arriving at Dorval - not because I call Indians children - because if it's a child, they'll have no money when they get here, so you'll do everything to make sure nothing happens."

[171] The witness wanted to explain that her watchword was not absolute because it applied to clients who were not used to coming to Montreal. Obviously, some patients or travel companions who came to Montreal more often did not require the same supervision. The help provided matched their needs.

[172] The witness described the responsibility of Patient Services for medical follow-up of the client after obtaining medical services in Montreal. Patient Services had forms that the physician

filled in, stating the diagnosis, medication and follow-up. The driver/escort/interpreter was responsible for obtaining this document. Patient Services ensured the liaison between the attending physician and the nurse in the communities to promote the best possible follow-up of patients on their return.

[173] The witness acknowledged that problems had arisen with Alphonse Grégoire regarding the use of taxis and reimbursement of the expenses. She testified that Health Canada had an agreement with taxi companies. Transportation pre-authorized by Patient Services was paid for by the Department. Alphonse Grégoire did not use the services of the taxi company although he knew he had permission to do so, and complained of having to pay for his taxi. He received reimbursement, but this resulted in disagreements. He also had occasion to use the transportation service but took a taxi. He had difficulty following instructions.

[174] As for meal expenses, Noëlla Bouchard said that Health Canada had an agreement with the airports and hospitals to provide meals at fixed prices. Clients received meal coupons that were given out based on the good judgment of the supervisor or the driver/escort/interpreter.

[175] Noëlla Bouchard remembered that the staff assigned to driver/escort/interpreter transportation experienced difficult and exhausting periods of work. All performed their duties well. The drivers/escorts/interpreters did an outstanding job and, in her view, there were no disagreements. She thought the work atmosphere was excellent until May 1994.

[176] On May 2, 1994, Noëlla Bouchard met with Jeanne-d'Arc Vollant and Carmen McLean in her office. They informed her that they did not accept Reine Parenteau's conduct. They accused her of being a perfectionist, too paternalistic and of treating them and the clients like children. Also, they said they no longer wanted to work with her and demanded that she be transferred to her old job as secretary. Finally, they claimed to speak for all drivers/escorts/interpreters.

[177] The witness said that she met with Reine Parenteau to inform her of the facts and find out her version. According to her, Reine Parenteau was stunned. She did not understand the basis of the accusations made against her.

[178] She suggested a meeting with the Complainants, which Reine Parenteau agreed to. The Complainants raised the same grievances and demands. Reine Parenteau apparently said to them: "Well, tell me what it is about my conduct you want me to change and I'll do better, I'll make the change." The Complainants refused outright; they wanted her to leave. Reine Parenteau refused the transfer, because she said she enjoyed the work she was doing.

[179] At one of these meetings, the witness admitted having said they were not in a band council. She wanted the Complainants to understand that in a band council, it is easier to dismiss an employee than it is in the Public Service, which is bound by a collective agreement and where the reasons for dismissal must be shown.

[180] Noëlla Bouchard met with the supervisor, Hélène Raymond, to inform her of the complaint and find out her opinion. Hélène Raymond told her that corrective measures should be taken by both Reine Parenteau and the drivers/escorts/interpreters and she refused to be mixed up any further in the problem.

[181] At the meetings with the Complainants, the witness stated that the subject of Reine Parenteau making racist, discriminatory or offensive remarks about natives never came up. Their grievances were confined to her paternalist conduct and her perfectionism.

[182] Noëlla Bouchard was asked to give her version of the events surrounding the reduction in Jeanne-d'Arc Vollant's hours of work.

[183] In fall 1993, the Native Friendship Centre of Montreal had expressed interest in taking over Patient Services in Montreal. This was the first time a native organization had shown such an interest. At a meeting with staff in the days that followed, she informed the employees of this

interest, saying that the takeover of Patient Services by native organizations had been allowed since 1989.

[184] Also, in the fall of 1993, the witness learned that as of January 1, 1994, the federal government would no longer provide health services to the Oujebougamou Cree. She passed on this information to Frances Couchees, a Cree interpreter, and told her that her contract ending in June 30, 1994, would not be renewed. She remembered meeting with Frances Couchees in the drivers/escorts/interpreters room while Jeanne-d'Arc Vollant was there. She testified that she took the opportunity to inform Jeanne-d'Arc Vollant, a Montagnais interpreter, that her hours of work would probably be reduced at the same time to twenty (20) hours/week because of the increase in Attikamek clients and the anticipated decrease in Montagnais clients.

[185] The witness stated that an analysis of the clientele indicated that in fact the Attikamek clientele had increased dramatically and Montagnais clientele had increased as well. The escort service had two Attikamek interpreters and one Montagnais interpreter, namely, Jeanne-d'Arc Vollant. After consulting with the supervisors, the witness decided that the operational requirements were for two (2) Montagnais interpreters, not to mention the Algonquin interpreter needed.

[186] In order to meet the operating budget of just three (3) person-years and the operational requirements, the witness distributed the work among five (5) drivers/escorts/interpreters: Carmen McLean, Attikamek, forty (40) hours; H el ene Petitquai, Attikamek, twenty (20) hours; Annette Cheezo, Algonquin, twenty (20) hours; Victor McKenzie, Montagnais, twenty (20) hours; and Jeanne-d'Arc Vollant, Montagnais, twenty (20) hours.

[187] Therefore, on June 27, 1994, at a staff meeting, Jeanne-d'Arc Vollant was informed that her hours of work would be reduced starting July 1, 1994. In September 1994, No ella Bouchard learned that a complaint of racism and harassment had been filed against her. This complaint came after it was decided to reduce the Complainant's hours of work.

[188] The witness expressed what she felt on learning of the accusation: (page 811)

[Translation]

"Terrible, terrible. You spend twenty (20) years or more establishing relationships of trust with a people and in the blink of an eye, someone comes along and destroys it all, it's awful. You can't describe how you feel when faced with such garbage, such a lie, it's indescribable, it's awful."

[189] Regarding the accommodation problems Alphonse Grégoire claimed to have experienced, the witness recalled that she had to follow the accommodation policy established by her employer with the native communities. According to this policy, the client was accommodated in a home and the Department paid a sum of forty dollars (\$40) a day. If the client chose to stay at the hotel, it had to absorb the additional expenses. In the specific case of Alphonse Grégoire, he was accompanying his son who was awaiting a heart transplant, and he wanted to be given rent. The witness said that she could not go against the directives. She was aware that the Schefferville Band Council had contacted Dr. Charles-André Lambert and, after negotiations, Alphonse Grégoire had obtained rent.

[190] Asked about the accusation that she had talked about the taxes she was paying, Noëlla Bouchard responded: (page 800)

[Translation]

"I have never talked about taxes in the context of my work, said as I understand it ... that I was cutting back services on the pretext that it was my taxes that were paying, that's utter nonsense. I never said any such thing, no, never."

[191] The witness, who had worked for twenty-seven (27) years with natives, maintained that she did not say offensive, racist or discriminatory things about them. She thought she had always treated natives with respect and had earned their respect.

[192] Noëlla Bouchard left Patient Services on July 1, 1995. After that date, she had no contact with the staff at Patient Services, saying she had found it very difficult to accept her departure from Patient Services when her job was abolished.

[193] Noëlla Bouchard remembered once asking Jeanne-d'Arc Vollant to explain why she was late for work. Reine Parenteau had told her that the Complainant was not at work and had asked her if she had obtained permission to be away. Jeanne-d'Arc Vollant had arrived at work a little more than one (1) hour late. Noëlla Bouchard informed the Complainant verbally that she had to let her employer know, but no disciplinary action was taken.

[194] According to Jeanne-d'Arc Vollant's testimony, she had told Noëlla Bouchard that a client had no money and had been told to leave him on the street corner and he would find money. The witness categorically denied having said such a thing.

[195] Patient Services employed a link nurse, Madeleine Hébert, as of March 7, 1994. Noëlla Bouchard heard this nurse state her opinion about the Indian Health Services policy. Specifically, the witness testified that the policy means that native patients are treated in the region nearest their own community. Now, this rule was not always followed. Madeleine Hébert believed that non-compliance with the policy resulted in needless expenses.

[196] Noëlla Bouchard called Madeleine Hébert into her office to tell her that she was entitled to her opinions but was to stop stating them publicly. However, it was not customary for management to reprimand an employee publicly, and she did not think it necessary to inform the staff of the reprimand given this employee.

[197] Noëlla Bouchard categorically denied having made the comments Claire Jourdain attributed to her in her testimony, while Claire Jourdain stated in her testimony that Lauria Vollant had been her driver/escort/investigator during a trip to Montreal in 1996. Noëlla Bouchard maintained that Lauria Vollant had never worked for Health Canada but rather for Mamit. Regarding Claire Jourdain's comments about the homes for clients or their travel

companions to Montreal, Noëlla Bouchard explained that the homes were under the supervision of the social worker at Health Canada. The witness visited these homes which, in her opinion, were very well kept. She also stressed that, contrary to Claire Jourdain's claims, these homes were private residences with private rooms. The only exception was the Hôtel Pierre, which had four beds in the basement in one room. However, the housing contract with this hotel was not renewed after 1989.

C. Marguerite Quoquochi

[198] Marguerite Quoquochi is a native of the Attikamek nation and has been a health liaison officer for fourteen (14) years: first at Health Canada and, since 1994, with the Mawantashi Band Council in La Tuque.

[199] Her job consists in arranging appointments, transportation and accommodation for natives who must travel to La Tuque, Shawinigan or Trois-Rivières for medical services. She was shown the ropes of her job by Noëlla Bouchard, who was her line supervisor. She thought that the latter had always encouraged and counselled her when she ran into difficulties. According to Marguerite Quoquochi, Noëlla Bouchard had always treated her like an adult, not like a child.

D. Jeannine Quoquochi

[200] A native from the Attikamek nation, Jeannine Quoquochi, like her sister, Marguerite, has been a health liaison officer for the Mawantashi Band Council since 1994. She previously held this position at Health Canada for two (2) years under the direction of Noëlla Bouchard. She corroborated her sister's testimony about Noëlla Bouchard's attitude and conduct towards her. She did not remember ever having felt that Noëlla Bouchard treated her like a child.

V. Analysis of the Evidence

[201] Was the Complainant the victim of harassment by Reine Parenteau and Noëlla Bouchard, harassment which the employer, Health Canada, had tolerated by its reluctance to take action?

[202] Before answering this question, it is appropriate to consider the notion of harassment. In the case *Daljit S. Dhanjal v. Air Canada* (C.H.R.R., volume 28, decision 35, pp. D/412 - D/413), we read:

"What, then, is harassment in concrete terms? What kind of conduct can be considered harassment? We know that it involves an abuse of authority. Although the blackmail known as "give-and-take" (or *quid pro quo*) harassment in sexual matters may be of little applicability in racial matters, harassment leading to a "hostile environment" does appear fully relevant.

The "hostile work environment" is reflected in gestures, speech or conduct that is likely to offend, hurt or humiliate an employee who differs from the others by his or her race. This is an abuse of authority leading, as the Supreme Court points out in *Janzen*, to a "demeaning practice" that "constitutes a profound affront to the dignity of the employees forced to endure it" (p. 1284 [D/6227, para. 44451]).

Racial harassment may take various forms: offensive comments, slurs, insults, assaults, caricatures, graffiti, the imposition of different duties, inadequate evaluations or damage to the victim's property. In every case, however, such conduct must include a racial dimension and have the effect of humiliating or offending the person who is the victim; that is, it violates his or her dignity and thus "detrimentally affects the work environment or leads to adverse job-related consequences for the victims of the harassment" (*Janzen, supra*, p. 1284 [D/6227, para. 44451]).

[...]

Thus, when it takes the form of jokes in bad taste, they must be persistent and frequent to constitute harassment. An isolated racial slur, even one that is very harsh, will not by itself constitute harassment within the meaning of the Act: *Pitawanakwat v. Canada* (1994), 19 C.H.R.R. D/110 [pp. D/121 - D/122], para. 40-41 (overturned in part on other grounds by the Federal Court in (1994), 78 F.T.R. 11 [21 C.H.R.B. D/355]).

In *Hinds v. Canada* (1989), 10 C.H.R.R. D/5683, the Tribunal found that a document insulting the Complainant as a Black man constituted racial harassment. However, it should be noted that not only were the annotations in this document excessively injurious on their face, but the complaint concerning this document was laid in the context of a series of prior acts of racial harassment occurring over a period of several years.

[203] The harassment of which Jeanne-d'Arc Vollant claims to have been a victim was caused on the one hand by the offensive speech of Reine Parenteau and Noëlla Bouchard in their relations with clients and their excessive paternalism towards these same clients and the driver/escort/interpreter staff.

[204] In support of her claims, Jeanne-d'Arc Vollant maintained that soon after obtaining permanent employment, she felt she was the victim of harassment by Health Canada staff.

[205] She remembered the comments of a colleague at the time of the Oka native crisis in 1990, who wanted to know if the money paid to native communities would be used to buy weapons. She felt humiliated by such comments and felt down about her employer's inertia in responding to this incident.

[206] Claude Paradis, regional director of Medical Services, thought it appropriate to do nothing further about this incident because it was an isolated act and he did not want to inflame the situation. This position seems entirely appropriate to me in the circumstances.

[207] I wish to point out straightaway that this incident is so far removed from the complaint, in April 1995, as it cannot be taken into consideration.

[208] In the 1990s, Alphonse Grégoire often accompanied his son from Sept-Îles to Montreal for medical treatment at Sainte-Justine Hospital. Noëlla Bouchard often refused to provide him with taxi services, meal coupons, and the possibility of renting an apartment.

[209] In March 1994, Claire Jourdain, a client who had travelled from Sept-Îles to Montreal with her grandson who was to be hospitalized, was refused the possibility of staying in the hotel rather than in a home by Reine Parenteau and Noëlla Bouchard.

[210] In the course of the disagreement, Noëlla Bouchard apparently said to her that natives came to Montreal to wander around and go into the stores with her taxes.

[211] Noëlla Bouchard tried to explain to her that she had to apply the rules, but Claire Jourdain said she could not care less about the rules.

[212] After pressing the matter with the regional director of Medical Services, Claude Paradis, and the director of Indian Health Services, Dr. Charles-André Lambert, Claire Jourdain received permission to stay at the hotel.

[213] Claire Jourdain wanted to point out in her testimony that Claude Paradis had sent her a letter of apology for this incident, which she was certain she had kept. She promised to send it to the Tribunal but did not follow through on her promise.

[214] From 1989 to 1992, Marie-Anne Cheezo had been hired by Health Canada as a freelance driver/escort/interpreter while pursuing her studies in Montreal. She stated, though could not specify the date, that she had heard Reine Parenteau make offensive remarks about natives, notably: "They have to be treated like children." She went on to say that she felt humiliated and demeaned by the control Reine Parenteau wielded.

[215] It is curious to note that she did not complain to her cousin, Hélène Raymond, or to her superior, Francine Buckell, both natives. She attributed her refusal to act to not knowing how to go about it and having more important concerns.

[216] All these events between 1990 and 1994 were known to Jeanne-d'Arc Vollant, who felt humiliated and demeaned by the way in which natives were treated. Moreover, she felt that the

attitude and conduct of Reine Parenteau, supervisor of drivers/escorts/interpreters, created an intolerable work atmosphere.

[217] After much thought and after consulting her colleagues, Jeanne-d'Arc Vollant decided to file a verbal complaint against Noëlla Bouchard. The Complainant was accompanied by a colleague, Carmen McLean. This verbal complaint concerned Reine Parenteau.

[218] Noëlla Bouchard was told that since Reine Parenteau's arrival as supervisor of drivers/escorts/interpreters, labour relations problems had gradually caused a deterioration of the work atmosphere. Reine Parenteau was accused of having an arrogant and paternalistic attitude towards both clients and the driver/escort/interpreter staff. The perfectionism pursued by Reine Parenteau made life at work unbearable. She gave the following examples to illustrate Reine Parenteau's attitude (Exhibit C-18):

[Translation]

"She rages against the clients in their presence and often blows up, saying things like: 'You aren't paid to do that,' 'if you don't listen to me, I'll say something to Noëlla or at the next meeting,' 'don't let the patients do this or that, they aren't capable,' 'don't go there,' 'go there,' 'hurry up,' 'come here,' 'go there,' 'you can't do that.'"

[219] The Complainant and her colleague told Noëlla Bouchard that they refused to work any longer with Reine Parenteau.

[220] Noëlla Bouchard was upset by what she heard. She never saw it coming because she had never heard or noticed that the work atmosphere within the team of drivers/escorts/interpreters was not pleasant. She thought the driver/escort/interpreter staff did an admirable job. They had to cope with the stress and anxiety of the patients, the difficulties of translation, medical language and unexpected circumstances.

[221] That same day, Noëlla Bouchard called a meeting with Reine Parenteau, Jeanne-d'Arc Vollant and her colleague. The Complainant was so evasive in her remarks that Reine Parenteau could not determine exactly what she was being accused of. All the same, she showed considerable open-mindedness, stating that she was prepared to make amends if it was explained to her exactly where she should make improvements. She even took the liberty of suggesting she was prepared to take courses on the Indian perspective if necessary. Jeanne-d'Arc Vollant refused any compromise, demanding instead that she be transferred to another service.

[222] Before discussing the employer's attitude, reprehensible or not, I intend to dispense with the complaint against Reine Parenteau.

[223] To this end, it seems appropriate to me to analyse the role and obligations of the parties involved.

[224] The policies and procedures manual for the employees of Patient Services in Montreal (Exhibit SC-9) sets out the philosophy of the service:

[Translation]

"The philosophy of the Montreal Patient Services is rooted partly in a perspective of individuals taking responsibility for their health, and partly in the autonomy of native communities for health services."

[225] This manual also describes the mission of the service:

[Translation]

"To receive all clients referred by the medical resources through the nursing staff of nursing stations or health centres in the Quebec region;

to provide transportation, accommodation and escort-interpreter service;

to provide the services in accordance with the national directives on Indian and Inuit Health Services, Non Insured Health Benefits."

[226] This manual contains the job description of Reine Parenteau, of which I have taken the essential elements (Exhibit SC-9, page 18):

[Translation]

"Article 5.3 (b) The dispatcher receives faxes from the health centres advising her of the arrivals, clinics and particular needs of clients and their escorts (if applicable). She ensures the presence of all necessary information as well as the signature of the staff nurse. In the absence of certain information, she will contact the health centre concerned to complete the information.

5.3 (g) The dispatcher plans and assigns the work of the drivers/escorts/interpreters according to the following parameters and priorities:

- gives priority to clients needing the services of an interpreter;
- provides quality service by ensuring that it is as effective and economical as possible;
- gives the driver/escort/interpreter enough time to complete the assignment properly and safely for him/her and the client.

5.3 (i) The dispatcher ensures that the driver/escort/interpreter contacts her after each trip and each clinic visit."

The main duties of the driver/escort/interpreter are as follows (Exhibit SC-9, page 20):

"5.4 (b) The driver/escort/interpreter contacts the dispatcher after each trip and after each clinic visit to obtain the next job assignment:

5.4 (d) In no circumstances may the driver/escort/interpreter change the job assigned without first discussing it with the dispatcher. The dispatcher makes the final decision.

5.4 (i) The driver/escort/interpreter must convey any special need of the client or any unforeseen circumstance to the dispatcher, who will convey it to the coordinator, if necessary.

5.4 (j) The driver/escort/interpreter takes the client to his/her clinic, ensure that he/she has all the documents needed for the appointment and/or admission, and sees that he/she receives the expected services."

[227] Reine Parenteau had the job of supervising the drivers/escorts/interpreters to ensure that native clients received the best possible service. In doing her job, she was to make sure that the employees she supervised did their jobs well. Logically, she was to stay in continual contact with them either to ensure that the patient received all the assistance he/she was entitled to expect, to settle any problems that might arise, or to distribute the work to be done.

[228] The Complainant resented her attitude, which she described as perfectionist and paternalistic; that is, as defined in the *Grand Robert* dictionary: "*Tendance à imposer un contrôle, une domination, sous couvert de protection*" ("tendency to assert control, domination, in the guise of protection" - Translation).

[229] In response, Reine Parenteau was convinced she never dominated the clients or staff under her direction. While admitting that she controlled how the work was done, she maintained that she was merely doing her job. She felt she had done her job with a constant concern for respect for others.

[230] There is no doubt that Reine Parenteau did her job to the best of her ability with enormous dedication.

[231] With all due respect for the opposing view, the preponderance of evidence objectively shows that Reine Parenteau did not exert over the staff under her direction, or over the clients, "control, domination, in the guise of protection."

[232] Nor does the preponderance of evidence show that Reine Parenteau used offensive remarks apt to humiliate the Complainant. Continuously checking the quality and execution of the work does not objectively constitute humiliation of the person in question.

[233] It is also difficult to reconcile the fact that Jeanne-d'Arc Vollant felt humiliated, put down, treated like a child by Reine Parenteau and that she saw fit to give her a birthday card in which she took the time to say that she liked her. Scarcely two (2) months later, Jeanne-d'Arc Vollant filed a complaint with her employer demanding that she no longer work with her and that she be transferred to another service.

[234] I also find it very difficult to understand Jeanne-d'Arc Vollant's claim that, through her conduct and attitude, Reine Parenteau undermined the work atmosphere of all driver/escort/interpreter staff to the point that it was necessary for her to leave the service. The overall evidence does not support this claim.

[235] It is accepted, in the world of labour relations, that the work atmosphere generally deteriorates little by little. Now, Francine Buckell, Noëlla Bouchard and Reine Parenteau never felt the slightest deterioration of the work atmosphere. On the contrary, they stated that labour relations were harmonious. Had this not been so, they would have noticed.

[236] The preponderance of evidence shows that Reine Parenteau treated native clients as she ought to have while encouraging respect for the rules set down in the agreements entered into between native communities and the government.

[237] With regard to the staff under her supervision, she performed the duties assigned to her and through her attitude, her conduct, her approach, showed no signs of the perfectionism and the paternalism that can objectively be called harassment against the Complainant.

Complaint against Noëlla Bouchard

[238] The events supporting Jeanne-d'Arc Vollant's complaint against Noëlla Bouchard stem from the meeting in the afternoon of May 2, 1994, attended by Noëlla Bouchard, Reine Parenteau, Jeanne-d'Arc Vollant and her colleague.

[239] Jeanne-d'Arc Vollant expressed her grievances against Noëlla Bouchard as follows (Exhibit C-8, page 3):

[Translation]

"First, we asked that Mrs. Parenteau be transferred to other duties because she was the main source of the harassment, being our alternate supervisor. Basically, Mrs. Bouchard tipped her hand and did us a big favour in showing her partial bias towards Mrs. Parenteau - it allows us today to lift the veil on what we consider racial discrimination systematically co-ordinated by none other than Noëlla Bouchard, the head nurse of the Patient Services unit of the Quebec regional office in Montreal.

... Mrs. Bouchard practises racial discrimination subtly in both speech and attitude, attacking our dignity and the respect we have for our peoples. We now consider Mrs. Bouchard to be the one at the root of all the problems of racial discrimination in our office; she says things like: "them, you know you have to treat them like babies" ... "you can't count on them, they forget everything" ... "it's my taxes that are paying for them." (They, them, etc. in the context used referred to natives generally.) She tolerated even more openly racist comments from her subordinate Madeleine Hébert during her stay with us; her silence, added to comments such as those above and her blatant harassment since early last May following our complaint, leave no doubt as to her opinions and her beliefs."

[240] Jeanne-d'Arc Vollant basically criticized Noëlla Bouchard for her lack of impartiality in managing the conflict between the driver/escort/interpreter staff and Reine Parenteau.

[241] The evidence has shown that Noëlla Bouchard, after the Complainant and her colleagues [sic] went to her, acted wisely in obtaining Reine Parenteau's version of the facts. She lost no time, that very day, in meeting with the parties involved to try and resolve the problems.

[242] In view of the intransigence of the Complainant and her colleague who demanded that Reine Parenteau leave, she decided the latter would not leave the service.

[243] Noëlla Bouchard reacted by saying that Reine Parenteau would not be transferred to another service. She knew full well that she could not transfer her without the consent of the interested party and without good reason. She said this was not a band council where it is easier to dismiss an employee than it is in the Public Service. I am convinced that this comment had no racist or discriminatory connotation. Rather, it was meant as an illustration that a native community was more flexible in its management of personnel than the Public Service.

[244] It was quite normal for her to adopt this position. Would she have been impartial had she agreed to the Complainant's demand? I do not think so.

[245] Jeanne-d'Arc Vollant maintained that Noëlla Bouchard had practised racial discrimination against natives in saying they have to be treated like children. Noëlla Bouchard explained herself on this point: (page 761-762)

[Translation]

"I could easily put myself in their place, if I had been sent to Russia for medical treatment and arrived at the airport in Russia, and found no one there who spoke my language, no one to look out for me, I would have been as stressed as a native arriving at Dorval with no one waiting for them. No one speaks their language, it must be terrible to experience that.

That's why I was concerned that the service be provided right down the line so that this wouldn't happen, and that's the watchword I expressed to the supervisors. "Make sure that never happens." I always told them: "When you have a referral coming, think of them as a child arriving at Dorval - not because I call Indians children - because if it's a child, they'll have no money when they get there, so you'll do everything so that nothing happens." So that was the watchword I expressed to them: "Do what you would do if it was a child arriving at Dorval who is all alone, and make sure everything is covered and that someone will be there to look after them."

[246] Noëlla Bouchard devoted her nursing career to natives. For seven (7) years she worked as a nurse in native communities. She can understand the feelings experienced by these people who must leave their community to travel to Montreal. On this point, Jeanne-d'Arc Vollant acknowledged that native clients felt powerless. She herself tried to reassure them, to make them feel safe. To illustrate the importance of providing impeccable service to these clients, Noëlla Bouchard compared them to children. It is not the individual as a native she is concerned to serve impeccably, but the individual to whom both she and her subordinates have an obligation to provide flawless service.

[247] I do not see how providing natives with a transportation service from the time they arrive in Montreal to the time they leave, is treating them like children.

[248] Nor do I see how fulfilling one's obligation to accommodate them, accompany them to appointments, ensure their medical follow-up in their community, provide them with the services of an interpreter is treating natives like children.

[249] Nor do I see how a native person can feel they are being treated like a child when they complain, and rightly so, when they do not receive all the services Patient Services promises to provide.

[250] Witnesses have said they heard Noëlla Bouchard say that natives were receiving services thanks to her paying her taxes. Noëlla Bouchard categorically denied saying such things and I am convinced she has told the truth. Noëlla Bouchard worked all her life with native communities. I have been impressed by the sincerity of her testimony, which has shown her affection for natives and her constant concern that clients receive the best service at all times.

[251] Therefore, the preponderance of evidence has not shown that Noëlla Bouchard practised, in her speech and her attitude, racial discrimination towards the natives and the native staff of Patient Services.

[252] Jeanne-d'Arc Vollant made four (4) accusations against her employer, Health Canada, which I intend to analyse.

A. Health Canada did nothing to stop the harassment and racism against the native clients and native staff of Patient Services.

[253] It seems appropriate to point out straightaway that Health Canada has a policy governing harassment in the workplace, a broad policy that covers all types of conduct.

[254] This policy creates for the victim the obligation to immediately report any incident not consistent with this policy. It also provides for disciplinary action in respect of the perpetrator of the act.

[255] It creates for Health Canada the obligation to act swiftly and effectively as soon as it is informed of the breach of policy.

[256] As soon as Noëlla Bouchard was informed of the problem she immediately tried to get the parties to reconcile and to establish dialogue in order to better determine the real causes of the dispute and resolve it. She met with a categorical refusal from the Complainant and her colleague. They stuck to their ultimatum, namely, that they would no longer work under Reine Parenteau and that the latter must leave Patient Services.

[257] Faced with her failure, Noëlla Bouchard went to her immediate superior, Francine Buckell, manager of Non Insured Health Benefits. Francine Buckell met with the union representative and it was agreed to resort to a mediator appointed by the Complainant to help resolve the dispute. This approach was refused outright. It was necessary to call in the regional director, Claude Paradis, but this too proved unsuccessful in the face of a second refusal to accept the intervention of a mediator.

[258] The Complainant's explanations of her refusal to agree to a mediator of her choice are hard to grasp and leave me puzzled as to her real intention to resolve the dispute. Rather than

demand Reine Parenteau's departure, she could have agreed to participate in the mediation process and then decide on the best course of action.

[259] In view of the refusal of mediation, the employer decided to proceed with an internal inquiry.

[260] The lawyer for the Commission claimed that the members of the committee of inquiry were not impartial because one of the committee members was an employee of Health Canada. Nothing in evidence permits me to draw this conclusion.

[261] The evidence showed that Health Canada acted promptly to resolve the dispute. I do not think more could be asked of it. Health Canada did not take the hard line but rather the opposite, namely, dialogue and the search for a mutual understanding, without success. Before taking a decision, Health Canada chose the route of the internal inquiry. This inquiry did not reveal any harassment or racism on the part of Reine Parenteau and Noëlla Bouchard against native clients and the native staff.

[262] As for the incident involving Madeleine Hébert, Noëlla Bouchard heard what she said. She hastened to meet with her to tell her that her comments were offensive and to have her put a stop to them. This was, in my opinion, an isolated incident. I do not think that she needed to be publicly reprimanded in order for good labour relations to be maintained.

B. Health Canada differentiated adversely in relation to Jeanne-d'Arc Vollant concerning employment, reducing her hours of work on July 1, 1994, in retaliation for her complaint of May 1994.

[263] In 1993, the operating budget for the driver/escort/interpreter staff allowed for three person-years of employment amounting to one hundred and twenty (120) hours/week. The staff consisted of one Attikamek interpreter, Carmen McLean, at forty (40) determinate hours/week; one Montagnais interpreter, Jeanne-d'Arc Vollant, at forty (40) hours/week (twenty (20)

determinate and twenty (20) indeterminate); one Cree interpreter, Frances Couchees, at twenty (20) hours/week; and one Algonquin interpreter, Annette Cheezo, at twenty (20) hours/week.

[264] Early in 1994, the statistics (Exhibit SC-12) show a marked increase in Attikamek clientele and a drop in Montagnais clientele. To this was added the fact that Cree Community Services were abandoned.

[265] In January 1994, Noëlla Bouchard met with Frances Couchees, a Cree interpreter, to inform her of the situation and that her contract ending June 30, 1994, would not be renewed. She also met with Jeanne-d'Arc Vollant to inform her of a possible decrease in Montagnais clients and that her contract for twenty (20) indeterminate work hours/week might not be renewed on expiry June 30, 1994.

[266] In view of the prevailing situation, Noëlla Bouchard consulted the supervisors of the driver/escort/interpreter staff about how to distribute staff in order to maintain the best service. It turned out that to meet the operational requirements, while remaining within the budget, it was necessary to employ two (2) interpreters to meet the needs of Attikamek clients and two (2) interpreters to meet the needs of Montagnais clients. This approach was submitted to manager Francine Buckell, who approved it.

[267] In order to implement these changes, Noëlla Bouchard used the twenty (20) hours/week recovered with the departure of Frances Couchees to hire an Attikamek interpreter. Then, the reduction in Jeanne-d'Arc Vollant's hours of work enabled her to hire a second person, a Montagnais interpreter, Victor McKenzie.

[268] The preponderance of evidence has shown that the Complainant knew it was possible her hours of work would be reduced several months before this occurred and before the complaint was filed in May 1994. Moreover, the employer's explanations for the rearrangement of her team of drivers/escorts/interpreters strike me as quite valid. They lead me to conclude that the

reduction in the Complainant's hours of work in July 1994 was not related to the complaint and that the employer did not act in retaliation against Jeanne-d'Arc Vollant.

C. Health Canada interfered with the technical committee charged with recommending a native organization to manage the administrative transfer of Health Canada's Patient Services to native organizations.

[269] In fall 1995, the Assembly of Chiefs of the First Nations of Quebec and Labrador decided to take over Patient Services administered by Health Canada. It gave the First Nations of Quebec and Labrador Health and Social Services Commission, through its co-ordinator, Michel Paul, a mandate to form a technical committee charged with analysing the proposals of native organizations interested in managing Patient Services and make a recommendation.

[270] This technical committee was composed of four (4) people: three (3) of native origin, namely, Michel Paul, Gilbert Courtois, Francine Buckell, and Chantal Renaud.

[271] Jeanne-d'Arc Vollant submitted a proposal that was not accepted by the technical committee, which recommended the firm Mamit Inuat. She claimed that her offer of services was not accepted because Francine Buckell and Chantal Renaud, employees of Health Canada, were on the technical committee. She felt she had been deprived of her right to a fair and equitable choice because the selection process was biased.

[272] The technical committee prepared the call for bids, a grid for evaluating the proposals, the evaluation criteria and an interview questionnaire. To ensure that the objective evaluation of the results, it adopted evaluation criteria. The process took place early in 1996. Following the analysis of the four (4) proposals received, Mamit Inuat obtained the best results (Exhibit SC-21). It was awarded the management contract on condition it was implemented effective April 1, 1996.

[273] The evidence has shown that the technical committee clearly was not influenced by the Health Canada representatives. Michel Paul, Francine Buckell and Chantal Renaud stated they

were not influenced, nor prompted by anyone to reject the Complainant's offer of services. Moreover, Claude Paradis, who was then retired, maintained that he never interfered with the members of the technical committee, particularly as he had advised Jeanne-d'Arc Vollant to submit her candidacy because of her experience and her knowledge of Patient Services. Richard Legault denied any interference in the committee. As for Noëlla Bouchard, it is hard to think she could have interfered as she left Patient Services in July 1995.

[274] The members of the technical committee were unanimous in stating that there had been no pressure or interference from Health Canada about the choice of manager.

[275] The evidence clearly shows that Health Canada did not interfere with the technical committee and that the selection process developed by this committee allowed for the selection of the manager to be entirely objective and impartial. It should also be added that once its choice was made, its recommendation had to be approved by the Chiefs of the First Nations of Quebec and Labrador.

E. Health Canada interfered with Mamit Inuat to prevent the hiring of Jeanne-d'Arc Vollant.

[276] Jeanne-d'Arc Vollant complained about interference from Health Canada with Mamit to keep this firm from hiring her. The validity of this claim rests solely on the testimony of Pierre Benjamin, a Mamit administrator. This witness maintained that the contract for the management of Patient Services was awarded conditional on Jeanne-d'Arc Vollant not being hired.

[277] He asserted that Claude Paradis and Richard Legault had imposed this condition at meetings in late 1994 and early 1995. Both these witnesses denied this claim. Knowing the mechanism set up for choosing the manager of Patient Services, I do not see how not hiring the Complainant could possibly have been a condition of the award of the contract.

[278] Pierre Benjamin met with the driver/escort/interpreter staff to evaluate them. He decided to hire all the staff concerned except the Complainant. When she asked why she had not been hired, he told her it was because she was overqualified. Why would he not have told her the real reason?

[279] Pierre Benjamin also maintained that in March 1996, he went to the office of Health Canada to sign the contract for the administrative transfer of Patient Services. He did not recall the date, but the evidence shows it was March 27, 1996. He stated with certainty that on that occasion, he met with Francine Buckell, who apparently suggested Jeanne-d'Arc Vollant not be hired. Now, the evidence has shown that on that date, she was on holiday. It has also clearly been shown that on that date Pierre Benjamin met with Marie-Line Roy, the manager of inter-regional liaison for Native Non Insured Health Benefits. She was replacing Francine Buckell. Marie-Line Roy wrote up the administrative transfer contract with Mamit Inuat and she signed it in Francine Buckell's place.

[280] She said that nothing was said about Jeanne-d'Arc Vollant. Moreover, I do not see that Health Canada had any interest in preventing Mamit Inuat from retaining the Complainant's services, the quality of whose work was never in question.

[281] Clearly, Health Canada in no way interfered with Mamit Inuat to prevent the hiring of Jeanne-d'Arc Vollant.

F. Health Canada's refusal to provide employment to Jeanne-d'Arc Vollant.

[282] The administrative transfer of Patient Services to the native communities resulted in the loss of employment for the driver/escort/interpreter staff of Patient Services. All this staff, except the Complainant, were hired by Mamit. Jeanne-d'Arc Vollant was therefore informed, in a letter sent to her March 7, 1996, that her services were no longer required effective April 1, 1996 (Exhibit C-7).

[283] Accordingly, the Complainant was informed that pursuant to the Work Force Adjustment Directive, she had surplus status for a period of six (6) months from April 1, 1996.

[284] She was to make known, by April 1, 1996, her choice between two options available to her: she could either stay employed in the Public Service and be relocated to another position, with no loss of benefits and privileges for a period of two (2) years, or leave her job and receive a six (6) months' separation incentive. If Jeanne-d'Arc Vollant opted to leave the Public Service after April 1, 1996, her separation incentive would be reduced to an amount proportional to the unexpired portion of the period. It was important that she make known her decision before April 1, because if, for example, she did so June 1 and opted to leave her job, she would receive one month's less separation incentive.

[285] During March 1996, the Complainant was absent from work. It was not until March 28, 1996, that the manager handling her file managed to reach her and tell her of the importance of making her decision known without delay. The Complainant considered it appropriate to retain the services of a lawyer.

[286] Pierrette Chagnon, regional director of Human Resources at Health Canada, then personally intervened in the matter. A meeting took place with the Complainant and her lawyer. Pierrette Chagnon explained to the Complainant that she was the president of the Employment Secretariat. As such, she could find her satisfactory employment. Pierrette Chagnon also explained to her that, even though she had not made her decision known by April 1, 1996, she could obtain from the Department an extension of the period of surplus status. Thus, if she chose to leave her job, she would still be able to receive a six (6) months' separation incentive.

[287] Jeanne-d'Arc Vollant did not feel she could make a decision on the spot and Pierrette Chagnon gave her time to think it over.

[288] A few days later, Jeanne-d'Arc Vollant's lawyer informed Richard Legault, the regional director who replaced Claude Paradis, that his client had decided to leave her job and take the separation incentive allowed.

[289] Pierrette Chagnon was criticized for not having sent the Complainant a written offer of employment as required by the Work Force Adjustment Directive.

[290] Pierrette Chagnon provided an entirely acceptable explanation in the circumstances and this irregularity alone cannot lead to a finding that Health Canada discriminated against the Complainant.

[291] Rather, I think that Health Canada treated the Complainant the same as it would anyone else facing loss of employment. Pierrette Chagnon's testimony was very impressive. She tried to treat the Complainant fairly and equitably by showing her that she could relocate her to another position. She even went so far as to ensure that she receive the full separation incentive, even though she was no longer entitled to it.

[292] The Complainant, for her part, had the wisdom to retain the services of a lawyer in order to take a carefully thought out and fully informed decision.

[293] Therefore, the evidence shows that Health Canada, in its management of the Complainant's possible loss of employment, did nothing that points to discrimination.

VI. Conclusion

[294] The facts revealed by the evidence and the balance of probabilities have not shown the merits of the Complainant's charge of discrimination levelled against the Respondents Reine Parenteau and Noëlla Bouchard. Nor have they shown the merits of the complaints against the employer Health Canada.

[295] Therefore, all the complaints are dismissed.

Signed by

Roger Doyon
Tribunal Member

Ottawa, Ontario
April 6, 2001

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T522/1799, T523/1899 and T524/1999

Style of Cause: Jeanne-d'Arc Vollant v. Health Canada, Reine Parenteau and Noëlla Bouchard

Decision of the Tribunal Dated: April 6, 2001

Date and Place of Hearing: June 13, 14, 15 and 16, 2000
October 4, 5, 6, 23, 24 and 25, 2000 and
November 7 and 8, 2000
Montreal, Quebec

Appearances:

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François Lumbu, for the Canadian Human Rights Commission

Nadine Perron, for the Respondent, Health Canada

François Parizeau, for the Respondents, Reine Parenteau and Noëlla Bouchard