

**CANADIAN HUMAN RIGHTS TRIBUNAL TRIBUNAL
CANADIEN DES DROITS DE LA PERSONNE**

PIERRE BERGERON

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

TÉLÉBEC LIMITÉE

and -

ALAIN RIVARD

Respondents

DECISION

2004 CHRT 16

2004/05/21

MEMBER: Roger Doyon

[TRANSLATION]

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I. INTRODUCTION

[1] On October 10, 2000, Pierre Bergeron filed a complaint with the Canadian Human Rights Commission (the Commission) against his employer, Télébec Limitée (Télébec). He alleged that his employer discriminated against him by

treating him in an adverse manner in the course of employment and by refusing to provide him with a harassment-free work environment because of his disability (depression), contrary to sections 7 and 14 of the *Canadian Human Rights Act* (the *Act*).

[2] Pierre Bergeron also filed a complaint on October 10, 2000 with the Commission, in which he alleged that Alain Rivard, a Télébec employee, discriminated against him by harassing him in the course of his employment due to his disability (depression), contrary to section 14 of the *Act*.

[3] At the start of the hearing, the Commission announced that the facts giving rise to the complaints warranted an inquiry by the Canadian Human Rights Tribunal. It stated that its role at the hearing was limited to an opening statement in which it recalled the principles that must guide the Tribunal in all human rights matters, particularly regarding discrimination.

II. EVIDENCE

A. Complainant's evidence

(i) Pierre Bergeron

[4] Pierre Bergeron was hired by Télébec as an installer/repairman on May 7, 1987. He had a college diploma in social science and a college diploma in electronics. It was a temporary position in the Rouyn-Noranda area. After three (3) months of working with a more experienced employee as his mentor, he was transferred to Ville-Marie where he performed his duties alone. In April 1988, he obtained a permanent installer/repairman position in La Sarre.

[5] In 1990, the Complainant applied for a splicer position in La Sarre and obtained the position on April 23, 1990. On November 20, 1995, he was informed that he would be laid off as of December 6, 1995 with recall rights for a period of 24 months.

[6] A collective agreement governs the labour relations of Télébec employees. The witness acknowledged that his seniority did not allow him to keep his job in his splicer job category, but did permit him to bump another employee in the installer/repairman job category because he met the requirements of the position that he had previously held for three years. The Respondent did not allow him to exercise his bumping right. He filed a grievance on December 6, 1995, which was

referred for arbitration on April 25, 1996 and the Teamsters Union withdrew the grievance on April 30, 1997.

[7] Pierre Bergeron claimed that, had he been able to exercise his bumping right, he would have continued to have stable employment, but that the refusal left him feeling insecure, which was the cause of his depression in August 1996.

[8] During a meeting with the grievance committee in March 1996, he learned, without knowing the specific source of the information, that employees on the callback list were never hired back. However, he was called back to work as of March 26, 1996 as a lineman in Sainte-Rose on the Lac Abitibi project for a period of approximately two and one half months. His working conditions were not those provided for in the collective agreement in force at the time of his layoff in December 1995. For example, travel time was no longer paid and the meal allowance had been eliminated.

[9] On May 15, 1996, the Complainant was informed of his layoff effective May 31, 1996 with recall rights for 24 months. However, on May 27, 1996, Pierre Bergeron was informed that his layoff was postponed to a later date. From June 3 to 21, 1996, the Complainant obtained a temporary promotion as a splicer. On June 12, 1996, the Complainant was again informed of his layoff effective July 12, 1996, which was postponed to August 2, 1996.

[10] The witness stated that, around July 19, 1996, Claude Mayrand offered him a permanent installer/repairman position in Val d'Or starting August 6, 1996. Pierre Bergeron had submitted a transfer request on May 15, 1996 as an installer/repairman in Val-d'Or when two installer/repairman positions (Exhibit I-14) in Val-d'Or were posted; he accepted the position. His acceptance ended his temporary promotion. It was a demotion that suited him because of the permanent nature of the position. At the end of the posting period, the Complainant learned that the Respondent had not selected any of the applications it received. As a result, when he was offered this installer/repairman position, it was not, in his view, the position he had applied for. He understood instead that the offer was the employer's acknowledging his bumping right he had asserted through the grievance he filed after he his layoff on December 6, 1995. However, he had not withdrawn this grievance because he suspected his employer of setting a trap for him. In his view, Télébec believed that he would not be able to perform the duties of an installer/repairman and that he would quit his job. He claimed that subsequent events showed that his concerns were valid.

[11] On Tuesday, August 6, 1996, he reported in to Claude Mayrand, his immediate supervisor in Val-d'Or. The latter appeared not to have been informed of his arrival and he had no vehicle or tools to provide him with for performing his work. The Complainant went to the depot to collect his tools.

[12] The next day, a vehicle was made available to him and he put his tools in it to work with a colleague. At the end of the day, since he did not have enough tools to do the job satisfactorily, he suggested to his immediate supervisor that he take Thursday and Friday off and return to work the following Monday with a vehicle having the right equipment and that was used by a student whose job would be over at the end of the week. His immediate supervisor accepted his suggestion. The Complainant stated that, over the weekend, specifically August 10, 1996, he became depressed and attempted suicide.

[13] He consulted his attending physician, Dr. Guy Perrier, on August 12, 1996, who diagnosed him with major depression; the physician recommended hospitalization, but he refused. His physician referred him to a psychologist and scheduled a return to full-time work on September 16, 1996. He saw his physician again on October 1, 1996, and he extended his absence from work until November 4, 1996; he met with his physician again on October 30, 1996 and the latter scheduled a return to part-time work, with no restrictions, on December 2, 1996.

[14] During the week of August 12, 1996, Claude Mayrand went to his residence to give him medical form BC1935, which he was to have his attending physician fill out and return to his employer. Pierre Bergeron claimed that the visit was only an excuse to ensure that he was indeed sick. In addition, during his convalescence, which ended on December 2, 1996, he noticed that Claude Mayrand drove slowly by his residence in his vehicle several times. Pierre Bergeron believed that his immediate supervisor was checking up on him to see if he was at home, and he felt harassed.

[15] During the same convalescence period, since he had obtained a permanent installer/repairman position in Val-d'Or, the Complainant, who was living in La Sarre, took steps to find a place to live closer to his place of work. He signed a purchase offer for a house in Val Senneville on November 4, 1996.

[16] On November 26, 1996, the Complainant met with Dr. Jean-Joseph Condé, a Télébec physician, with whom he arranged a gradual return to work, with no restrictions, at a rate of two consecutive days for the week of December 2, 1996, three days a week as of December 9, 1996 and full time as of January 3, 1997. He went into work on December 2, 1996. He stated that he felt exhausted after those two days of work. He had the chance to meet with Claude Mayrand and Alain Rivard. In the Complainant's view, that meeting was intended to put a great deal of pressure on him to get him to quit his job. Alain Rivard reportedly said to him, "You would be better off quitting than staying here."

[17] On December 9, 1996, in Dr. Condé's absence, he met with the nurse in the physician's office to explain that he had had difficulty doing two consecutive days

of work the previous week. He arranged with the nurse to work two consecutive days that week instead of the three previously arranged.

[18] During that work period, Claude Mayrand and Alain Rivard, his immediate supervisors, took him to a room to criticize him for his work performance and unwarranted absences. He stated that he started to cry because of the criticism directed at him.

[19] During the week of December 16, 1996, Pierre Bergeron worked on December 16, 18 and 20. On Monday, December 16, 1996, Alain Rivard informed him that, in the next few days, he was planning to install a business telephone system that had three telephone lines with the potential of eight telephones. The Complainant asked Alain Rivard for training prior to installing the telephone system, particularly for programming it. Alain Rivard denied his training request and told him that he was given the installer/repairman position because he supposedly knew what to do. Throughout that day, he did wiring work at Val-d'Or Performance. He stated that he does not recall submitting a request to Claude Mayrand, during the week of December 16, 1996, for taking December 23, and 24, 1996 off.

[20] On December 18, 1996 when he arrived at work, the business telephone system was to be installed, and the Complainant went to the customer site, the Brasserie la Pépie in Val-d'Or. He first had to remove the existing telephone system and then install the new one. While he was working, the Complainant noticed a central office assignment error such that the telephone numbers were not routed to the right place. He managed to correct the problem with the help of a colleague who was performing an installation at a nearby business.

[21] The witness stated that his installation and programming work went fine except for preventing long-distance calls from the telephone set in the kitchen. He informed the customer that a colleague would come to complete the work.

[22] At the customer's request, the witness moved a public telephone. Since the work was not originally planned, he borrowed the required tools from a colleague and moved the public telephone. Pierre Bergeron was very satisfied with his day's work and believed that the customer was very satisfied too.

[23] Since he was on sick leave on Thursday, he went to work Friday morning, December 20, 1996. He was again greeted by Claude Mayrand and Alain Rivard. Alain Rivard criticized the quality of his work at Val-d'Or Performance the previous Monday. He told him that he did not need someone who could not keep up with the group. He even advised him to quit before it cost him his life.

[24] The Complainant revealed that he felt crushed and humiliated and that he burst into tears, but nevertheless began his day's work at a customer site to do pre-wiring. During the week of December 23, 1996, staff was reduced for the holiday period and he had to work on December 23 and 24, 1996 to respond to emergencies and he was then on leave until January 6, 1997. Around 3:30 p.m., he felt on the verge of tears. He returned to the office and cleaned his truck. The witness informed his dispatcher that he was leaving work and that he would notify the secretary. When he arrived at the secretary's office, he started to cry and was not able to talk to her; he indicated that he was leaving even though it was 4:30 p.m. and was supposed to finish at 5:00 p.m. When he left the secretary's office, he encountered Claude Mayrand. He was too upset to talk to him and he waved his hand at him. In spite of the depression symptoms he was experiencing, it was not until January 13, 1997 that he decided to see his doctor.

[25] He returned to his home in La Sarre and, at the end of the week, he thought he had partied too much or ate too much because on the morning of Monday, December 23, 1996, he was still at home sick, with gastro-enteritis.

[26] Before the start of his shift, he contacted the secretary to say that he would be away because he was sick and that, if he did not call the next day, he would be away that day too. He requested pay for the days he was away by using vacation days instead of sick leave.

[27] On January 6, 1997, the Complainant went to work. He claimed that, despite the arrangement with Dr. Condé for returning to work full time with no restrictions starting January 6, 1997, he decided that his work week would be four days. He said that he had spoken with his attending physician but there is no document confirming this.

[28] The Complainant stated that when he arrived at work on Monday, January 6, 1997, Alain Rivard and Claude Mayrand were waiting for him. They criticized him for leaving work on December 20 without informing his immediate supervisor. Alain Rivard also criticized him for his unwarranted absence on December 23, 1996, which showed that he could not be trusted. He again criticized him for the quality of his work, including at the Brasserie la Pépie. Alain Rivard reportedly added that a letter of reprimand would be placed in his file and he claimed that this was done. Pierre Bergeron tried to provide an explanation but they refused to listen to him and he again started to cry. In cross-examination, when asked to provide details about the letter of reprimand that was to be placed in his file, the witness referred to a memo dated December 23, 1996 from Claude Mayrand to Alain Rivard.

[29] After that meeting, he was assigned some pre-wiring work at a car dealership. He agreed to work with two colleagues from 4:00 p.m. to midnight for the next three days. He did pre-wiring in a government building.

[30] Even though he still believed that his work week was four days and that they were over, he went into work on Friday, January 10, 1997. At the end of his work day, he was summoned for a meeting with Claude Mayrand in the presence of Jean Levert, the union steward. Alain Rivard took part in the meeting via video-conference. He explained that, during the time he had been an installer/repairman, Pierre Bergeron had failed to demonstrate that he was capable of performing the new duties in accordance with the standards required for that position.

[31] As a result, he was returned to his original position as a cable splicer in La Sarre. However, since the position had been eliminated in December 1995, he was to be laid off as of January 24, 1997 with recall rights for a period of 24 months. Claude Mayrand issued him a written layoff notice dated January 10, 1997 (Exhibit P-21).

[32] After being laid off, Pierre Bergeron filed a grievance on January 26, 1997, which was withdrawn by the union on April 30, 1997. Despite his layoff scheduled for January 24, 1997, Télébec offered him, and he accepted, some splicing work for a project in Parc de la Vérendrye from January 27, 1997 to February 21, 1997, pursuant to an agreement with the Teamsters Union. He worked with Serge Chayer, another splicer. However, the usual working conditions provided for in the collective agreement were not respected. As such, the travel, accommodation and meal allowances had been eliminated. In addition, travel time from his home base to the place of work was not paid. He did not file a grievance, however.

[33] The Complainant claimed that, when he was laid off on February 21, 1997, Serge Chayer stayed on the job although he had less seniority than he did. However, the Complainant did not file a grievance.

[34] In July 1997, Pierre Bergeron received a telephone call from the Human Resources Department offering him work as a splicer for repairing the cable feeding the Chibougamau airport. This was for a 52-hour period of work during the week of August 4, 1997, which the Complainant accepted. The conditions of employment were confirmed in a letter to him from Claude Mayrand dated August 4, 1997. The working conditions, arranged through a letter of understanding with the Teamsters Union, did not comply with the collective agreement, according to the Complainant's claims, but he agreed to come back to work anyway, particularly since at the end of that employment period, he would have another 24 months of recall rights, and he did not file a grievance.

[35] Given that the first Monday of August was a statutory holiday, his immediate supervisor, Claude Mayrand, gave him permission to go from La Sarre to Chibougamau during the day on August 4, 1997 and start work on the Tuesday, specifically August 5, 1997. His immediate supervisor, Claude Mayrand, informed Lyne Doroftei in writing on September 16, 1997 that the Complainant's work was satisfactory.

[36] In October 1997, he was offered temporary work as a cable splicer for a period of approximately six weeks starting October 20, 1997, and he accepted. This was a project in Chibougamau of approximately six months. The work for the project was subcontracted out except for the splicing, which was assigned to the Respondent's employees. Once again, the conditions of employment for this project did not comply with the collective agreement by reason of a letter of agreement between the employer and the Teamsters Union.

[37] Pierre Bergeron believed that the agreements between Télébec and the Teamsters Union, which deviate from the provisions of the collective agreement, did not apply to him as a splicer because they referred only to technicians and linemen. When giving him the temporary assignments that he accepted, Télébec should have given him all the benefits provided for in the collective agreement. As a result, he believes that he was treated differently by the Respondent compared to other employees who were given the benefits provided for in the collective agreement.

[38] Although he disagreed with the specific conditions set out in that letter of understanding, he accepted the work and did not file a grievance. His immediate supervisor was Richard Leblanc. At the end of November 1997, his immediate supervisor informed him that the contract would be extended for an indefinite period. He understood from Richard Leblanc's words that he would have work until the end of the project. However, he did not recall Richard Leblanc's telling him that his temporary assignment would end on December 24, 1997.

[39] Pierre Bergeron stated that he had health problems at the beginning of December 1997. He maintained that he was expecting a relapse of his depression. On December 8, 1997, he went to the Radissonie-Chibougamau CLSC, where he saw a physician who prescribed Paxil for him. The witness revealed that he had a bad reaction to the Paxil and had to be hospitalized on December 9, 10 and 11, 1997 in Chibougamau.

[40] On December 10, 1997, Pierre Bergeron had a visit from Alain Rivard, who gave him written notice from his immediate supervisor, Richard Leblanc, that he would be laid off as of December 24, 1997 with recall rights for a period of 24 months.

[41] On December 11, 1997, a physician from the Radissonnie CLSC issued a medical certificate with a diagnosis of depression and sick leave starting December 9, 1997.

[42] The Complainant left the Chibougamau hospital on December 11, 1997. He travelled from Chibougamau to Val-d'Or using his employer's vehicle and then his own vehicle to his residence in La Sarre.

[43] He saw his attending physician, Dr. Guy Perrier, on December 15, 1997, who recommended sick leave from December 15 to 29, 1997. He saw the Complainant again on January 6, 1998. In his report, he described his patient's depression and recommended a return to full-time work on January 6, 1998.

[44] Following his layoff, the Complainant was never called back to work. Between May 21, 1998 and September 10, 1998, he filed 10 grievances. After reviewing them, the Teamsters Union concluded that all the grievances, except one involving payment of a lump sum, were unwarranted. The Complainant filed a complaint with the Canadian Industrial Relations Board on October 2, 1998 against the Teamsters Union for failing to respect its representation duty, but the complaint was dismissed.

[45] The Complainant produced an appraisal report for 1995 prepared by Jean Mercier, Director of Network Maintenance and Works. Jean Mercier said that the Complainant met the quality and productivity standards as an overhead, underground and building cable splicer. He contributed to the team's success on the projects they were assigned to. Moreover, the quality and administrative management of his work had improved and the employee handled his equipment and his occupational health and safety well. His effectiveness was equal to that of his colleagues.

[46] The witness also produced an appraisal report for 1996 prepared by Claude Mayrand dated March 3, 1997. The report described the Complainant's problems adjusting to changes in the company, which forced him to switch from a splicer position to an installer/repairman position. Productivity and quality of work were not being met. He could not handle the pressure brought on by a new position.

[47] Pierre Bergeron was asked to describe the duties of an installer/repairman during the three years after Télébec hired him, specifically 1987 to 1990. He was assigned to installation and repair of telephone lines in the residential sector. Work would be assigned to him by means of a work order. Installation consisted of running a wire from the junction box on the pole to the residence and then wiring the interior of the residence based on the number of telephone jacks that the customer had requested. The installer/repairman would also deliver telephone

sets to the customer. At that time, telephone sets did not need to be programmed. Repair work required the installer/repairman to go to the customer's home to identify the source of the fault. If it was the telephone set, it would be replaced. If it was the wiring or connections, the installer/repairman would do the repairs. Residential work occupied about 80% of the Complainant's time.

[48] He was also occasionally called upon to do the same work in the business sector, but for about 20% of the time. He would install "Panther" telephone systems, equipped with programming that gave customers some features such as ring tones and the hold function. In the Complainant's view, programming a telephone system was much harder in 1987 than it is today. He would install public telephones, but the programming was not his responsibility.

[49] In March 1988, the Complainant received eight hours of training on the "Trillium" telephone system and, in March 1989, eight hours of training on the "Tie" telephone system. These were business systems. He acknowledged, however, that, despite the training his employer provided, he did not have to install and program these telephone systems. His work was limited to repairing the systems.

[50] On May 7, 1996, Télébec posted two installer/repairman positions (96-19NO and 96-20NO), one of which Pierre Bergeron applied for. To obtain the position, the candidate had to meet the minimum requirements. In cross-examination, he was asked to demonstrate whether he met all the requirements, namely:

College diploma in electronics or the equivalent and a driver's licence. The Complainant stated that he met these requirements.

Bilingual (French and English): an asset. The Complainant stated that he could write in French and English and could speak French fluently, but not much English.

Knowledge of various products and maintenance services ("Norstar" series and others): an asset. The Complainant acknowledged that, compared to 1990 when he was an installer/repairman, many more services were offered in 1995 and many products had been added, especially with the arrival of computers. More powerful and more sophisticated telephone sets he was not familiar with had flooded the market.

Ability to transact and communicate with customers. The Complainant admitted that in 1990 his work consisted of completing a work

order, not selling telephone systems. Occasionally he would offer the customer an additional telephone set.

Knowledge of programming principles. Since he had only installed one programmable telephone system, the witness acknowledged that he had little knowledge of programming principles.

Basic data transmission knowledge. The Complainant admitted that he had no basic knowledge for meeting this requirement.

[51] The job posting also included a summary of the position, including:

Contact customers in advance. The witness acknowledged that he did not have to do this in 1990, and that in 1996, the installer/repairmen had become salespeople because they would recommend products to customers based on their needs.

Occasionally provide work estimates for business installations. The witness acknowledged that this was not included in an installer/repairman's duties in 1990.

Perform a basic inspection of one's vehicle, be responsible for it, drive it safely in the course of one's work and identify mechanical problems. The witness stated that these duties were the same in 1990.

Promote and sell the company's products/services and equipment. The Complainant stated that this was not part of an installer/repairman's duty in 1990 and stated that he was unaware that it existed in 1996.

Adequately represent the company to customers. The Complainant stated that he did not know whether this was part of an installer/repairman's duty in 1990.

Perform the work safely, accurately, promptly and courteously; be available to travel. These requirements were also part of an installer/repairman's duties in 1990.

[52] Pierre Bergeron also described a splicer's work. It involves joining wires. A central cable contains many smaller cables that are routed underground in different sectors. The splicer connects the wires. In 1992, fibre optics appeared on

the market. The joining work was then done by laser. In addition to connecting wires, the splicer would also repair cut cables and replace worn cables.

[53] On July 2003, the Complainant prepared an information document about the current hearing, in which he wrote that it was the result of Télébec's discrimination and harassment towards him. The document was entitled [translation] "Welcome to the Proceedings" (Exhibit I-2). The Complainant placed this document on the windshields of vehicles belonging to the Respondent's employees in Val d'Or and Rouyn-Noranda. He had about 40 copies of the document. He also arranged for the document to be placed in the mailslots of Rouyn-Noranda employees and executives. He explained that he did this to obtain encouragement from his former colleagues.

B. Respondents' evidence

(i) Serge Faubert

[54] Until 1997, when he retired after 30 years of service, Serge Faubert was General Manager of Télébec's telephone network for Abitibi-Témiscamingue, which had about 125 employees under 10 immediate supervisors, including Claude Mayrand and Alain Rivard.

[55] Serge Faubert stated that in 1987 when he started in his position, the Abitibi-Témiscamingue telephone network was obsolete. Télébec had to invest heavily to provide the region with a cutting-edge network comparable to those in large urban centres. Massive hiring was required for that. Serge Faubert indicated, however, that as the work progressed, he identified that layoffs would be necessary, and they occurred at the end of 1995.

[56] The cuts were made among executives and employees, particularly those assigned to installing poles and cables and to splicing. The witness explained that the possibility of layoffs hugely affected the workers' morale, and they became worried and anxious.

[57] Before proceeding with the staff reductions, the witness took part in meetings with human resource managers and union representatives to ensure that the layoffs would be done in accordance with the collective agreement.

[58] Lists of employees likely to be called back to work for specific projects were prepared, and the employees who were laid off had recall rights for 24 months, as per the collective agreement. To reduce operating costs, Télébec intended to subcontract out work. However, to give preference to recalling employees on the

callback list, Télébec and the Teamsters Union agreed, through letters of understanding, to amend some of the working conditions set out in the collective agreement.

[59] Pierre Bergeron was then notified on November 20, 1995 that he would be laid off as of December 6, 1995 due to a reduction in work following a company reorganization.

[60] Serge Faubert stated that, at the end of 1996 or the beginning of January 1997, he met with Claude Mayrand and Alain Rivard, the Complainant's immediate supervisors, to discuss the fact that the Complainant took days off when he was needed at work. The witness stated that, in his view, Pierre Bergeron's conduct warranted a written disciplinary measure placed in his file.

[61] The meeting also dealt with the issue of the Complainant's skills and ability to perform the installer/repairman duties. His immediate supervisors believed he did not have the technical qualifications for the position.

[62] Serge Faubert revealed that he understood their assessment. He explained his claim by the fact that the installer/repairman duties had changed a great deal over the years. In fact, when the Complainant was working as an installer/repairman from 1987 to 1990, his duties generally consisted of residential installations and repairs. In 1996, the duties became much more complex since the work was done in the business sector and required the installer/repairman, in addition to doing installations, to program more sophisticated systems. It was therefore much more specialized work and required working with customers; the installer/repairman had to promote and sell equipment.

[63] Serge Faubert also stated that he had met with some of the Complainant's colleagues, including Jean Levert, the union steward, who informed him that the Complainant was not capable of fulfilling the installer/repairman duties. He wanted to know what Télébec's intentions were with respect to keeping that employee on staff.

(ii) Claude Mayrand

[64] Claude Mayrand has been employed at Télébec for 20 years. When he was hired, he had a college diploma in electrotechnology. He started out as an installer/repairman for three years. He then worked for a year and half on a team of workers who installed poles, cables and strands. He was then assigned to maintenance work, such as cable repairs, for about two years. Claude Mayrand was then assigned as an installer/repairman in James Bay for two and half years. When he returned from James Bay, he was promoted to Manager of Line

Planning and Estimating. Two years later, he became Manager of I&R (installation and repairs) from 1995 to 1998. In 1998 he was promoted to Manager of Network Management until he went back to school in 2000.

[65] The witness was asked to describe the tasks specific to the position of installer/repairman for the residential and business sectors between 1987 and 1990.

[66] In the residential sector there were two parts to the installer/repairman work. First there was exterior cabling, which involved running service wires from the pole to a box at the customer's residence. Then there was interior cabling, where the installer/repairman would install wires in the house to provide access to the telephone set connections. Performing these tasks required knowledge of the colour coding of cables in order to do the connecting.

[67] The second part was repair work. It involved disconnecting the customer's telephone line to check the line's resistance and the condition of the ground.

[68] The witness submitted that, overall, the installer/repairman at that time would spend about 95% of his time in the residential sector.

[69] Claude Mayrand stated that the installer/repairman would occasionally perform his duties in the business sector. This involved installing small telephone systems called "Trillium" and "Panther" by doing cabling. He would also do programming using predetermined fixed registers. As an example, the witness mentioned assigning lines to telephone sets and the type of ringing. The witness felt that 1% of the installer/repairman's work involved programming.

[70] The witness explained that, in 1992, microprocessors came to the business sector, which led to the appearance of numerous telephone systems. Because of microprocessors, the volume of data sent to telephone sets increased. Programming languages could therefore be integrated into the telephone systems. With the disappearance of fixed registers, customers could now have systems that were more tailored to their needs.

[71] Claude Mayrand believed that, because of the new technology, the installer/repairman had to add analysis work to his regular duties. The witness illustrated that statement with the arrival of the "Norstar" telephone system, which had three lines and eight telephone sets. According to him, this system was not very complex. Then came the 032 and SL1 systems, and programming them required knowledge of register management.

[72] The witness stated that video-conferencing then appeared on the market. The installer/repairman had to deal with a new technology, which was also true with the arrival of the Internet.

[73] As for the residential sector in 1996, the installer/repairman duties changed, partly because the obsolete network had been updated and partly because new installations were less frequent, and so was the need for repairs.

[74] He maintained that, in 1996, 90% of the installer/repairman's work was devoted to technical aspects, programming and customer relations, and 10% to the install/repair work as it was in 1990.

[75] The witness was asked to describe how the knowledge of someone with a college diploma in electronics was necessary for the duties of an installer/repairman. He explained that this diploma gave the installer/repairman sound basic knowledge of electronic concepts such as capacitors, the phenomena associated with inductors, and aspects of resistance and programming.

[76] The witness stated that, confronted with the new technology, Télébec put telephone systems in service centres, such as those in Val d'Or and Rouyn-Noranda, to enable installer/repairmen to become familiar with the new equipment and upgrade their skills. Information sessions were also given by the manufacturers of these systems.

[77] Claude Mayrand was Pierre Bergeron's immediate supervisor when he came into work in Val d'Or on August 6, 1996. He acknowledged that there might not have been a vehicle available for him to do his work. However, he added that the Complainant was then teamed up with another installer/repairman for doing cabling at Forage Benoît. Claude Mayrand went to the site to ensure that the work was up to standard. He recalled that the Complainant's colleague told him that the Complainant was rusty and not very productive.

[78] Claude Mayrand recalled that Pierre Bergeron was then away sick and returned to work on December 2, 1996. At that point, he was no longer the Complainant's immediate supervisor; Alain Rivard had taken over that responsibility. He himself was Pierre Bergeron's immediate supervisor only in Alain Rivard's absence.

[79] Claude Mayrand recalled that, during the week of December 16, 1996, when Alain Rivard was away, the Complainant asked for permission to have December 20 and 23, 1996 off. Claude Mayrand contacted the Network Operations Centre to find out the workloads for those dates. After receiving a response from the

Network Operations Centre, the witness denied the Complainant's request, given that the workload required all staff to be on duty.

[80] The witness stated that, on December 20, 1996, he went to the work centre in Val d'Or. At around 3:30 p.m., he met Pierre Bergeron in the hallway. He greeted him and exchanged a few words with him, and the Complainant told him that things were going fine. Claude Mayrand stated that, when he got back to his office, the Network Operations Centre called to notify him that the Complainant had left work around 3:30 p.m. because he was sick, whereas his shift was to end at 5:00 p.m. Claude Mayrand realized that the Complainant had neglected to inform him before leaving work, even though he should have done so.

[81] In addition, on December 23, 1996, Claude Mayrand was filling in while Alain Rivard was away. He received a call around 8:00 a.m. from Chantal Bédard, the secretary, informing him that the Complainant had contacted her to notify her that he could not come in to work because he was sick and to record his absence as vacation days.

[82] Since Claude Mayrand knew that an employee could not take vacation without prior authorization, he contacted industrial relations to determine what procedure he should follow. They informed him that a disciplinary measure could be placed in Pierre Bergeron's file for unwarranted absence. He then designated the absence as sick days. Claude Mayrand decided to put off making a decision until after the holidays, when the Complainant's immediate supervisor, Alain Rivard, would be back at work. However, he did write a letter to Alain Rivard that same day describing the events and suggesting a meeting with the Complainant on January 6, 1997.

[83] Claude Mayrand did meet with Alain Rivard on January 6, 1997, and they decided that they would meet with the Complainant on January 7, 1997. Alain Rivard asked Claude Mayrand to accompany him since he was there during the events. The witness recalled that the meeting was held in a meeting room at the Val d'Or Work Centre around mid-afternoon on January 7, 1997. It lasted 20 or 30 minutes.

[84] Claude Mayrand recalled starting the meeting by telling Pierre Bergeron that he had not followed the procedure for leaving or being away from work and that his absence had disrupted operations and obliged colleagues to work overtime. The witness recalled that the Complainant accepted these comments stoically. Alain Rivard then spoke and pointed out to the Complainant that there were problems with his productivity and to inform him if there were specific things he needed for performing his work, because he wanted him to be comfortable in his job. Claude Mayrand stated that the Complainant said that everything was going well in his job and that he was just as capable as all the other installer/repairmen.

Claude Mayrand also recalled that he was polite during the meeting and that at no point did the Complainant cry.

[85] When the meeting ended, Claude Mayrand continued speaking with Alain Rivard. They discussed the Complainant's skills and ability to perform the duties of an installer/repairman. Claude Mayrand expressed his concerns to Alain Rivard regarding the Complainant's technical skills and his ability to develop communication skills for promoting and selling equipment. Alain Rivard had also received comments from the union steward Jean Levert, the Complainant's workmate, on the quality of Pierre Bergeron's work at the La Pépie bar, specifically that he was slow and that he himself had to do the Complainant's work.

[86] A meeting was also held with Serge Faubert, Alain Rivard and the witness on January 8, 1997. Serge Faubert was not satisfied with the measures taken following the Complainant's unwarranted absences. The meeting also dealt with Pierre Bergeron's ability to perform his duties. The witness expressed his opinion but was not involved in the decision-making. Claude Mayrand informed Serge Faubert and Alain Rivard that, in his experience, Pierre Bergeron's skills and knowledge did not match the profile expected of an installer/repairman in 1996.

[87] Claude Mayrand also recalled that, on the morning of January 8, 1997, Pierre Bergeron went to the office of his immediate supervisor, Alain Rivard. The witness was in the office next to Alain Rivard's and overheard the conversation. Pierre Bergeron reportedly told Alain Rivard that he had doubts about his ability to do the work of an installer/repairman and that he was wondering whether he would be able to keep his job. This meeting was a few minutes long and Pierre Bergeron then returned to work.

[88] Claude Mayrand recalled that on January 10, 1997, in Alain Rivard's absence, the Industrial Relations Department asked him to sign a letter and give it to Bergeron informing him of his layoff from his installer/repairman position. He summoned the Complainant to the same meeting room where the previous meeting had been held and, in the presence of the union steward, Jean Levert, he issued him the letter (Exhibit P-21) after it was read to him. Pierre Bergeron made the comment that there would be a follow-up to that layoff. He did not think that Alain Rivard attended the meeting via video-conference.

[89] In his complaint, Pierre Bergeron claimed that, during his sick leave from August 11 to December 2, 1996, Claude Mayrand frequently came to his house to make sure that he was indeed sick. In response to this claim, the witness said that he went only once to the Complainant's residence in La Sarre to deliver a medical form (1935) to be filled out by his attending physician. The witness recalled the Complainant greeting him politely. Claude Mayrand stated that it was the only

time he went to the Complainant's residence. However, he acknowledged that he may have driven by the Complainant's residence in his vehicle two or three times because he had to do so in order to get to his father's house or the restaurant where his sister was working.

[90] Claude Mayrand said that immediate supervisors must prepare employee evaluations every year called "Annual Employee Profiles." Even though Pierre Bergeron's immediate supervisor was Alain Rivard, the witness prepared the Complainant's annual profile for 1996 because during the period from August 1996 to the end of December 1996, he was the immediate supervisor of the Complainant as an installer/repairman and because of Alain Rivard's absences. The witness explained that an employee's annual profile evaluated performance and the skills and abilities acquired over the year.

[91] The witness stated that, to prepare the Complainant's annual profile, he obtained comments from Alain Rivard, Brigitte Côté from the Network Operations Centre, and Yvan Deault, the Depot Manager. He also considered comments from the Complainant's colleagues, including Jean Levert, the Union Steward.

[92] When preparing an employee's annual profile, they meet with the employee to let him/her know their impressions. In Pierre Bergeron's case, the meeting did not take place because he was on a layoff in March 1997 when his evaluation was being prepared. The witness explained that when the employee's annual profile is completed (Exhibit P-43), a copy is placed in the employee's personal file. This was true in Pierre Bergeron's case.

[93] Claude Mayrand recalled that on July 16, 1998, Pierre Bergeron filed a formal notice with Télébec (Exhibit P-45) claiming that his evaluation for 1996 was incorrect and contained false statements that were damaging to his reputation and likely to jeopardize his future as an employee with Télébec.

[94] Claude Mayrand consulted with the Industrial Relations Department to determine what stance to take. It was agreed that Pierre Bergeron's annual profile for 1996 would be removed from his personal file, partly because no one had met with him during the preparation of his evaluation and partly because it was very likely that he would not be called back to work as an installer/repairman following his layoff on January 10, 1997. Consequently, on July 27, 1998, Claude Mayrand send a letter to the Complainant informing him that his annual profile for 1996 and all copies of it would be destroyed (Exhibit-46).

[95] The witness stated that, in August 1997, Télébec had to repair a copper cable feeding the Chibougamau airport. The project would require 52 hours of

temporary splicing work. He put in a staffing request with the Human Resources Department (Exhibit I-16), and they identified Pierre Bergeron as being available.

[96] Claude Mayrand contacted the Complainant to offer him the work and inform him of the duration and conditions involved. He accepted the work, and everything was confirmed in writing (Exhibit P-26).

[97] When the work was finished, Alain Rivard inspected it. Claude Mayrand issued a memo on September 16, 1997 (Exhibit P-27) pointing out that [translation] "the repairs to the cable feeding the Chibougamau airport complied with established standards and that Pierre Bergeron's work was satisfactory."

[98] Claude Mayrand was asked to give his version about the Complainant's health condition. He stated that he was never aware of Pierre Bergeron's health condition because information about an employee's health condition is confidential. Claude Mayrand was also asked to respond to Pierre Bergeron's claims that he (Mayrand), between August and December 1996, had told him off several times in an unwarranted manner because of his health condition.

[99] The witness stated that he never had a row with Pierre Bergeron, either when he came to work on August 6, 1996 nor when he visited him at his home in August 1996. He acknowledged that, during the employment period of December 1996 and January 1997, he had some conversation with the Complainant the morning before he left for work. The conversation was simply to obtain information and ensure that everything was going fine, nothing more. He added that, during the meetings on January 7 and 10, 1997, there were no rows then either.

[100] Claude Mayrand stated that, in August 2003, he went to the Rouyn-Noranda Service Centre. Because he had travelled the previous day in Télébec's vehicle, his own car was at the service centre. When he arrived, he saw a document on the windshield of his car. It was entitled, [translation] "Welcome to the Proceedings' (Exhibit I-2). When he went into the service centre, he saw several copies of the document in employee mail slots. The document dealt with the hearing in the case of Pierre Bergeron versus Télébec and Alain Rivard in Montreal on September 10 to 19, 2003. It also said [translation] "For information, contact Mr. Pierre Bergeron at 819-847-3479."

[101] In cross-examination, the Complainant asked Claude Mayrand to acknowledge that, when he arrived for work in Val d'Or on August 6, 1996, he told him [translation] "Pierre, this is your last chance", which the witness categorically denied. The witness also denied telling the Complainant that he was

not a team player, that he did not need someone like him on his team and that he worked too slowly.

(iii) Alain Rivard

[102] Alain Rivard was hired by Télébec in 1977 for the position of installer/repairman and, in 1979, for the position of central office and transmission equipment technician. In 1981, he again held the position of installer/repairman until 1984, when he was promoted to Dispatcher. In 1986, he became an Inspector/Analyst, then in 1988, Manager of Repair Service Quality, and in 1992, Manager of Property.

[103] In 1995, he became Technical Services Manager for the Val-d'Or sector, which includes the entire Eastern Abitibi region. He was also made Technical Services Manager for the James Bay sector. These two sectors form a territory with an area of 350,000 km². Supervising them required him to be away from his Val d'Or office frequently.

[104] To help him in his work, the witness had assistance from Claude Mayrand, who had the same responsibilities for Val-d'Or and Rouyn-Noranda or when he was taken away from his office.

[105] Alain Rivard said that, by 1995, the installer/repairman profile had changed a great deal compared to 1990, especially in the business sector. In fact, rapid technology improvements and the advent of new telephone systems along with the addition of promotion and sales made the work of an installer/repairman much more specialized.

[106] He recalled that, on December 2, 1996, Pierre Bergeron appeared for work in Val-d'Or. It was part of a gradual return to work with no medical restrictions. Because he was away when the Complainant came into work, Claude Mayrand assigned him some line transfer work in Senneterre. When he arrived, Alain Rivard called Pierre Bergeron back to Val-d'Or to do some more urgent work in the business sector.

[107] Claude Mayrand introduced Pierre Bergeron to him upon his return to Val-d'Or at the start of the afternoon. The witness knew that Pierre Bergeron was returning to work as an installer/repairman after being a splicer for several years. As result, the witness said [translation] "He was a bit rusty."

[108] Therefore, he assigned Pierre Bergeron to Télébec Mobilité to help an installer/repairman with the installation of a 032 telephone system. At the start of

the week of December 9, 1996, he also informed the Complainant that he would assign him the installation of a "Norstar 3/8" system (3 lines - 8 phones) at the Brasserie La Pépie during the week. It was relatively simple work that allowed the Complainant to become familiar with his new position. The witness stated that he told Pierre Bergeron that if he had any problems, he should feel comfortable communicating with him at any time.

[109] During that week, the Complainant was indeed tasked with installing the "Norstar 3/8" system at the Brasserie La Pépie. The installer had to run two telephone lines to the customer premises from the central office, install the system in the location that the customer specified and join the two lines. He then had to take care of the distribution by doing the interior wiring to the required telephone sets. Programming was also required, specifically opening the input ports for the lines and assigning them to the various telephones.

[110] The time usually allotted for installing such a system was about eight to ten hours. However, since the Complainant was back to work as an installer/repairman, Alain Rivard had allowed 16 hours for the work to be done.

[111] The witness stated that, while the work was being carried out, he went to the Brasserie La Pépie to check the progress. Pierre Bergeron informed him that he was having problems with putting the lines through. He also met with the owner of the Brasserie, who informed him of her concerns. She claimed that the installer/repairman was having problems with the programming because he had told her that it was not his area since he was a splicer. She was concerned that the deadline scheduled for the work would not be met.

[112] Alain Rivard told the Complainant about the customer's comments. Pierre Bergeron answered that it was not installer/repairman work that he wanted to do, but splicing work instead. He said that he did not like having contacts with customers. Alain Rivard told him that he had no choice.

[113] The witness stated that, at that meeting, he did not tell Pierre Bergeron that he was dragging his heels and was not a team player. In fact, Alain Rivard noticed that the Complainant took 22 to 24 hours to install the "Norstar 3/8" system, which was six to eight hours more than he had allotted.

[114] Pierre Bergeron's work was not at all what was expected of him. Specifically, his contact with the customer and his programming left much to be desired. Therefore, to minimize his contact with customers, Alain Rivard decided to assign Pierre Bergeron to work with two installer/repairmen, Jean Levert and Richard Duquette, on a job at Aubé Pontiac Buick in Val-d'Or. Richard Duquette

was responsible for dealing with the customer. The work involved completely recabling the telephone system and network cabling.

[115] Alain Rivard stated that he told Pierre Bergeron that he would have pre-wiring to do. He had told him that, if he had any problems, to rely on his colleagues. Alain Rivard had the opportunity to go to the work site. Jean Levert and Richard Duquette informed him that Pierre Bergeron was dragging his heels a bit and was not relying on them very much. He went to see the Complainant and he stated: (pages 1850-1851)

[translation]

" ... then I asked Pierre how it was going. It's going alright. I said, "Your colleagues tell me that you're dragging your heels a bit. Is something not going right?" "Well, it's not what I want to do. I don't like doing that, you know; I'm a splicer." "Yes," I said. "But that's what needs to be done." I talked for a bit and then said, "It's important for you to talk to them." Anyway, it went something like that. Then he told me a bit about his health condition.

Q. What did he say to you?

A. Well, according to him, he was depressed, and I am not a doctor, but what I said to Pierre was, "As far as I understand, you are gradually returning to work, with no restrictions. So I expect the same work from you as from the others." Then he said, "Yes, but you yourself experienced depression." I said, "Yes, I did. That's why I'm talking to you about this. I expect the same work from you as from the others, but if you are not well, take the right steps before it costs you your life. It's important; I went through it myself. But it's up to you to do something about it. If you're not well, go see a doctor. As far as I'm concerned, you have work to do. End of story."

[116] Alain Rivard added that he had had major depression with infarction in 1992 and that he was sensitive to someone who may be experiencing depression.

[117] Télébec had secured a contract at Val-d'Or Performance, a subsidiary of Aubé Pontiac Buick, for refitting some wiring with wire covers, in other words placing mouldings to hide wires on the outside of walls. Richard Duquette was in charge of the project. Alain Rivard decided to move Pierre Bergeron to this project to help him with the work.

[118] Richard Duquette informed Alain Rivard that the quality of the Complainant's work at Val-d'Or Performance was good but that there was a problem with his productivity.

[119] Alain Rivard secured a contract with Lands and Forests, a government building, with the specification that it had to be done between the hours of 3:00 p.m. and 10:30 p.m. The project was assigned to the installer Yoland Audet, who needed an installer/repairman with him. He had to install a telephone system and the networking.

[120] Alain Rivard thought that Pierre Bergeron might be interested in the wiring work on this project and proposed it to him. He felt that Pierre Bergeron would be much more comfortable in this work setting. He did accept the offer and seemed content with it.

[121] Alain Rivard stated that the quality of Pierre Bergeron's work was again good. The problem was his productivity. He had to call in an extra installer/repairman, Alain Brouillette, to ensure that the work would be completed in the time frame stated to the customer.

[122] Alain Rivard recalled that he was probably on vacation during the week of December 16, 1996. However, since he lived in Val-d'Or, he was in the habit of briefly stopping by the work sites to see how everything was going.

[123] When he came back to work in January 1997 after the holidays, Alain Rivard read the document that Claude Mayrand had sent him regarding the Complainant's leaving work on December 20, 1996 and his absence from work on December 23, 1996 (Exhibit I-15). He stated that he was disappointed to hear about Pierre Bergeron's conduct. Alain Rivard explained that if his absence was due to illness, he could understand. However, if the Complainant was away for no valid reason and in spite of the fact that Claude Mayrand had not allowed him to take vacation during that time, it was a much more serious issue. If that was the case, Alain Rivard was disappointed that Pierre Bergeron had acted that way after he had tried to accommodate him as much as possible in the performance of his work.

[124] After Claude Mayrand brought him up to date on the facts surrounding the events, he decided to meet with Pierre Bergeron to hear his version of the facts, in the presence of Claude Mayrand, who was more aware of the events and could answer any questions that may be asked.

[125] That meeting was held in the afternoon of January 7, 1997 in the meeting room. Claude Mayrand spoke first and described the events on December 20 and

23, 1996. He informed Pierre Bergeron that he had not followed the proper procedure when he left work on December 20, 1996 and during his absence on December 23, 1996, which was to notify his immediate supervisor. He added that his absence had resulted in productivity problems because the work had to be done with reduced staff during the holidays and that they had to put in overtime. Then Alain Rivard took over and asked Pierre Bergeron if he felt capable of doing the installer/repairman work. The Complainant said that he was capable of doing the work and that his productivity was fine. Alain Rivard reminded him, however, that his productivity had not been satisfactory in the duties he was assigned before the holidays. He maintained that the issue of his health never came up in that meeting and stated that the Complainant did not cry. The Complainant's only comment was that it was more difficult for him to do the work when he felt pressured. The witness answered that if he felt he was having problems with pressure, all he had to do was tell him so that he could help him.

[126] Following that meeting, Claude Mayrand and Alain Rivard discussed the situation and shared their points of view on the Complainant's work evaluation, and they decided to meet with the manager, Serge Faubert, the next day.

[127] At that meeting, Claude Mayrand informed Serge Faubert about the events on December 20 and 23, 1996. Serge Faubert asked whether the Complainant had been issued a reprimand because of his behaviour. Alain Rivard clearly recalled that Serge Faubert soundly criticized them for not having done so.

[128] Alain Rivard then informed Serge Faubert that Pierre Bergeron's situation was worrying him. He told him about all Pierre Bergeron's difficulties since returning to work and that he was planning on ending the Complainant's employment as an installer/repairman. Serge Faubert told him to contact industrial relations. The witness contacted industrial relations to inform them about the issue he was dealing with and his decision to end the Complainant's employment.

[129] The Industrial Relations Department prepared a layoff notice (Exhibit P-21). Because the witness was away when the document was received, Claude Mayrand signed it and issued it to Pierre Bergeron during a meeting on January 10, 1997. The witness stated that he did not take part in that meeting, not even via video-conference.

[130] Alain Rivard stated that he saw the Complainant again on December 12, 1997 under relatively special circumstances. He was in Val-d'Or getting ready to leave for Chibougamau, when Richard Leblanc asked him, since he would be in Chibougamau, to issue a layoff notice to Pierre Bergeron, who was hospitalized there. He did not feel comfortable with this request, so he contacted the Industrial Relations Department, which gave its approval.

[131] He went to the hospital and the Complainant greeted him politely. He said that he was not surprised by his visit because he was expecting a layoff notice. Alain Rivard asked him about the reason for his hospitalization. The Complainant told him about his depression. Alain Rivard said to him, (page 1904)

[translation]

"You know, it's important to be healthy in life." At one point I said, "You need to take the right steps to take care of yourself before it costs you your life. There is no other way to get through this than to take care of yourself, change your pace of life and your way of doing things. I'm telling you this from experience. I went through it myself; it's important. You have the chance here. It's odd to say it, but you have the opportunity while you're here in the hospital to get some help. Take advantage of that."

[132] Alain Rivard believed that the Complainant was receptive to his comments. The conversation continued for a few more minutes and then he left.

[133] The witness was asked to comment on the Complainant's claim that he had been laid off because of his health condition. He explained that he was never aware of the Complainant's health condition, except for what he had told him regarding the pressure he felt when performing his work.

[134] The witness was also asked to comment on the Complainant's allegation that he was not given the same opportunities as other employees, such as training during his probationary period. The witness denied the allegation. He maintained that the opposite was true, that he gave the Complainant every opportunity by assigning him tasks that would enable him to adjust to installer/repairman work. As for training, Alain Rivard stated that Télébec does not provide training to installer/repairmen with a college degree in electronics. It was up to the employee to train himself by studying the documentation that comes with the equipment made available to him.

[135] Regarding the Complainant's allegation that Télébec refused to provide him with a harassment-free workplace, Alain Rivard responded that, during meetings he had with the Complainant, he asked if everything was going well. He told him what he expected of him. Pierre Bergeron was receptive but said he could not take the pressure. He stated that he had never had a row with the Complainant. In fact, Alain Rivard was convinced that he had done everything he could to help the Complainant meet the requirements of his work.

[136] Alain Rivard recalled that, around July 25, 2003 when he came to work, there was a document on his desk entitled [translation] "Welcome to the

Proceedings" (Exhibit I-2). He found out that copies of the document were circulating among the employees. He stated that he had been very concerned about this because it caused unrest among the employees. He reported to the Industrial Relations Department.

(iv) Lyne Doroftei

[137] She started working at Télébec in 1984. Starting in 1990, she held the position of Human Resources Manager and, in 1995, became Labour Relations Manager. Her work involved advising managers in the application of the collective agreement and representing the company at union/management meetings for discussing the application of the collective agreement, the grievance process, negotiations and the preparation of letters of understanding between parties.

[138] In 1995, she was actively involved in the administrative reorganization that led to the elimination of many lineman and splicer positions in a variety of locations.

[139] A seniority list by position was prepared. To identify employees to be laid off, seniority and bumping rights were applied, as provided for in the collective agreement. The individuals affected by the layoffs were placed on a callback list and had recall rights, if the employees were needed, for 24 months, after which time they would lose their seniority and their jobs.

[140] Whenever a callback was required for a position, the Human Resources Department would call an employee back based on seniority, availability and the ability to meet the normal requirements of the position.

[141] To reduce operating costs and increase productivity on specific projects, the Respondent was planning on subcontracting out work, to the disadvantage of laid-off employees. The Teamsters Union instead wanted laid-off employees to be called back to work. As such, on May 25, 1996, the parties signed a letter of understanding (Exhibit I-4) that would expire at the end of May 1996 providing for the recall of employees on the callback list for the Rémigny and Macamic projects. This agreement provided for fewer benefits than those in the collective agreement, specifically regarding overtime pay, bonuses and accommodation and meal allowances.

[142] On May 27, 1996, this letter of understanding was extended for an indefinite period. It also applied to all projects other than those originally planned.

[143] On November 12, 1996, the parties signed a letter of understanding in effect until December 20, 1996 for the Parc La Vérendrye project. This letter of understanding again involved calling back employees on the callback list with working conditions that were different than those in the collective agreement, specifically regarding overtime pay, bonuses and accommodation and meal allowances.

[144] That letter of understanding was extended on January 17 and February 22, 1997. The latter extension was for an indefinite period and applied to all projects that the company planned to carry out.

[145] According to the witness, the hiring conditions were then enhanced after consultation with the Teamsters Union without involving written letters of understanding. As an example, the witness pointed out that, for the Chibougamau project, a per diem allowance of \$62 was negotiated to cover meals and accommodation. Also, on July 7, 1998 (Exhibit I-8), the parties signed a letter of understanding that reflected the conditions verbally agreed to since the letter of understanding of February 22, 1997. This letter of understanding maintained the principle previously established verbally that an employee could turn down proposed work.

[146] Lyne Doroftei explained the layoff procedure under article 13.17 of the collective agreement (Exhibit I-9) in force in 1995. According to the procedure, employees with less seniority in a job category in the seniority unit can be laid off as long as employees with more seniority are capable of performing the work.

[147] An employee affected by the layoffs had the choice of being laid off or assigned to another position or job classification in the seniority unit as long as he/she was capable of performing the required duties in a reasonable time frame not exceeding 10 working days and as long as the assignment did not displace a more senior employee or employee in the same classification in a different seniority unit, provided that the employee in question was capable of performing the required duties and that the transfer did not displace a more senior employee.

[148] The employer had to proceed with all employee reassignments in accordance with the order below. The Complainant was not granted bumping rights because the employer believed that he was unable to perform the required duties in the 10-working-day period.

[149] This provision in the collective agreement does not appear to create the obligation for the employer to call employees back to work because clause 13.18 of the collective agreement deals only with the rules that apply during a recall. Through letters of understanding, the employer agreed to call back laid-off

employees with fewer working conditions than those set out in the collective agreement.

[150] For the staff reductions, Pierre Bergeron had the least seniority in the splicer job category and in the La Sarre seniority unit. As a result, he was classified as a redundant employee with bumping rights. If he could not exercise his bumping rights, he would be laid off and placed on a callback list with recall rights for 24 months.

[151] A list of employees with bumping rights was prepared on November 17, 1995. Because it was permitted to do so pursuant to article 13.17 (2) of the collective agreement, Télébec decided not to give the Complainant a new assignment.

[152] The witness stated that, after the employees to be laid off were identified, on December 15 and 31, 1995, a callback list was prepared. Employees on that list could be called back to work. Under the provisions of clause 13.18 of the collective agreement, the callbacks were to be done in reverse order of the layoffs as long as the employee concerned was capable of performing the work.

[153] Article 13.19 of the collective agreement also specifies that [translation] "an employee called back to work and assigned to a location other than his/her normal workplace during the layoff may refuse the proposed assignment and wait to be offered a position at his/her former workplace as long as the proposed position can be filled by a laid-off employee with less seniority who is capable of carrying out the work."

[154] The witness explained the application of this clause in the Complainant's case. Pierre Bergeron was a splicer and his usual workplace was La Sarre. If he had been called back for an assignment in a location other than La Sarre, he could have refused the assignment and remained on the callback list. As such, when the Complainant was called back to work on March 26, 1996 for the Rémigny and Macamic project, he could have refused it because it was in a different location than his usual workplace, on the condition that a more junior employee was capable of performing the work. This was the case because, on March 26, 1995, another employee, Yves Héroux, who was also a splicer and had less seniority than Pierre Bergeron was available (Exhibit I 3). The witness explained that it would have been different if the Complainant had been called back to work after May 26, 1995, when Yves Héroux was no longer available because of a callback. As a result, the Complainant could not refuse the assignment since there was no other splicer with less seniority on the callback list.

[155] The witness also explained that the collective agreement was silent on the consequences of an employee refusing an assignment despite his obligation to accept it. The witness stated that, in such circumstances, the employee would still remain on the callback list until the 24-month recall rights expired.

[156] The witness stated that an employee who is on a layoff may also come back to work if a permanent position becomes vacant or if a new permanent position is created.

[157] Lyne Doroftei was also asked to comment on the provisions in article 22 of the collective agreement, which deals with temporary transfers. This provision is applied when a very high volume of work requires an employee to be temporarily moved to a workplace different than his/her usual one. At that point, the employee is entitled to certain benefits such as travel expenses, reasonable accommodation expenses and meal allowances. However, the witness pointed out that the provisions in article 22 of the collective agreement did not apply when employees on the callback list were called back to work, because the employment conditions were governed by the letters of understanding.

[158] Lyne Doroftei provided explanations about the application of article 21 of the collective agreement, which deals with permanent transfers. This provision covers the situation where the employer requires an employee to be transferred from his/her usual workplace to different one. The witness pointed out that this article is not applicable in the case of job postings. In fact, when a position is posted, an employee who decides to apply accepts the results of that decision, whereas for a permanent transfer, the employer requires the employee to move to a different workplace.

[159] Lyne Doroftei described her involvement with Pierre Bergeron's layoff on January 10, 1997. On January 9, 1997, the manager of the Labour Relations Department, Reynald Wilson, asked her to prepare a letter (Exhibit P-21) to the Complainant informing him that his installer/repairman position would end on January 24, 1997 and that he would return to the callback list for 24 months from the date of his layoff. She was informed that Pierre Bergeron had obtained a posted installer/repairman position and that he had not demonstrated the ability to perform his new duties in accordance with the standards required for the position.

[160] The witness explained that clause 13.12 of the collective agreement provided that [translation] "if an employee does not demonstrate the ability to perform the new duties in accordance with company standards within 120 days following the promotion or transfer, the employee shall return to his/her prior position and location ..."

[161] The witness also stated that on December 9, 1997, she received a telephone call from Richard Leblanc, Pierre Bergeron's immediate supervisor, notifying her that the Complainant's job was to end on December 24, 1997 but that he was away from work in the hospital. He enquired about the need, given his absence, to inform the Complainant in writing about his layoff effective December 24, 1997. Richard Leblanc told her that Pierre Bergeron had been temporarily called back to work on October 20, 1997 for approximately six weeks and that his assignment had been verbally extended until December 24, 1997. On December 10, 1997, Richard Leblanc confirmed with the witness by email the information that he had given her the previous day (Exhibit I-12).

[162] The witness prepared a layoff notice regarding the Complainant effective December 24, 1997 with recall rights for a 24-month period from the date of his layoff (Exhibit P-30).

[163] Following his layoff on January 10, 1997 (Exhibit P-21) the Complainant submitted a grievance (Exhibit P-23) in which he challenged his layoff and demanded his installer/repairman position back as well as all the benefits he lost.

[164] After the grievance was filed, the grievance committee met to discuss it. Attending that meeting were the Complainant, his union steward Jean Levert, his immediate supervisor Alain Rivard, and the witness Lyne Doroftei from the Labour Relations Department. She was responsible for taking the minutes of the meeting (Exhibit P-65).

[165] Lyne Doroftei stated that the company wanted to call back the Complainant on August 27, 1998 for some temporary work as a pole installer, but that they could not reach him (Exhibit I-3). The witness acknowledged that the collective agreement did not stipulate the procedure to follow for calling back an employee. She explained that the usual practice was to do the callback by telephone.

[166] The inability to reach the Complainant did not constitute a refusal of the callback, and he remained on the callback list until his recall rights expired on December 24, 1999.

[167] The witness explained that, to announce a layoff to an employee, they would meet with the individual in person to inform him/her. If the employee was away, they would arrange for a company representative to meet with the employee and issue a written layoff notice.

[168] Lyne Doroftei was asked to comment on the Complainant's claim that Serge Chayer, with less seniority than he had, remained employed whereas he was laid off. Using Serge Chayer's employment history (Exhibit I-19) Lyne Doroftei

showed that Serge Chayer had been placed on the callback list on December 7, 1995 when he had previously held the positions of lineman and splicer.

[169] Because he had more seniority than Serge Chayer, Pierre Bergeron was temporarily called back as a splicer for the period of January 27 to February 21, 1997. Serge Chayer was temporarily called back as a splicer from February 3 to March 17, 1997. Therefore, the Complainant could not claim the work given to Serge Chayer because he was already working when Serge Chayer was called back to work.

[170] The witness stated that, according to the employment history, Serge Chayer then obtained a temporary job as an installer/repairman from March 17 to November 23, 1997. In the meantime, Serge Chayer applied for an installer/repairman position and was selected. Since November 24, 1997, he has held a permanent installer/repairman position. The witness explained that the Complainant's previous attempt to obtain an installer/repairman position had failed, which explained why Serge Chayer remained employed instead of the Complainant.

[171] Lyne Doroftei also commented on Pierre Bergeron's claim that Yves Thérout, a splicer on the callback list at that time with less seniority, had been temporarily called back from May 27, 1996 to January 1, 1999. The witness explained that when Yves Thérout was called back to work, Pierre Bergeron had already been working since March 26, 1996 and remained there until he went on sick leave in August 1996. Therefore, he could not claim the work given to Yves Thérout.

[172] Lyne Doroftei, when cross-examined by Pierre Bergeron, had to explain how it was that, after he was laid off on December 24, 1997, he was never called back to work before his recall rights expired on December 24, 1999. With reference to the callback list (Exhibit I-3), Lyne Doroftei answered that only one employee had been temporarily called back on December 14, 1998 and that that employee had more seniority than the Complainant did. In 1999, Paul Villeneuve, Roger Morissette, Marc Mercier and André Boisvert were called back but they all had more seniority than the Complainant did.

[173] The witness was asked to review the letters of understanding (Exhibits I-4, I-5, I-6 and I-7) that deal with the temporary rehire of technicians and linemen and explain why they were applied to other jobs, including splicers. Lyne Doroftei answered that these letters of understanding, with the agreement of the Teamsters Union, were applied to all employees on the callback list and that everything had been confirmed in the signing of the letter of understanding on July 7, 1998 (Exhibit I-8) covering the rehire of employees on the callback list.

[174] Lyne Doroftei stated in cross-examination that the attending physician's report used by the Medical Department was required when an employee's absence due to illness or injury may exceed eight days. She confirmed Dr. Condé's testimony that the employer's representatives are never informed about the nature of an employee's illness. The information sent by the employer's physician is limited to the disability period, the date of return to full-time or part-time work, with or without restrictions.

(v) Dr. Jean-Joseph Condé

[175] At the beginning of Dr. Condé's testimony, the Complainant relieved him from his patient/physician confidentiality and consented to his disclosing the contents of his medical file and personal notes. From 1992 to 1997, he was the staff physician at Télébec. Since 1997, he has been the Respondent's medical consultant from his private office for medico-administrative issues among its employees. Dr. Condé explained the company's procedure when an employee is on leave due to illness or a work-related injury.

[176] The employee must provide a report from his/her attending physician (form 1935) used by the Medical Department, in other words, directly to Dr. Condé's office. Upon receipt of the duly completed form 1935, he reads it and prepares an administrative report (form 1936) reproducing the information in the attending physician's report without disclosing the diagnosis, which is confidential. The administrative report is forwarded to the director and the employee's immediate supervisor. One part of that report is sent to the Benefits Department to notify them of the appropriateness of the leave. A copy is also sent to the employee.

[177] The medical consultant meets with the employee when it is necessary to determine whether the employee, who is declared fit to return to work, is ready to resume his/her duties, when the leave is extended, or when the treatment appears to be insufficient or inadequate, in order to reassess the appropriateness of the leave. A report (form 5483) is then prepared by the medical consultant and sent to the same employer stakeholders, including the employee involved.

[178] The witness met with the Complainant on August 27, 1996 when he was on leave with a September 2, 1996 return to duty scheduled by his attending physician. The Complainant informed the physician that he had had major depression 11 years earlier.

[179] The progress notes in Dr Condé's file (Exhibit P-54) stated that the Complainant had been on leave since August 19, 1996 for major depression with the triggers he identified as change in employment level, loss of a loved one he was attached to, namely his dog, and moving. He concluded that the leave was

warranted and that the return to duty scheduled for September 16, 1996 by the attending physician should probably be extended. He recommended that the Complainant continue the psychotherapy he had been receiving once a week since August 16, 1996 and to see his attending physician again in two weeks.

[180] On October 1, 1996, the Complainant's attending physician, Dr. Guy Perrier, sent a medical report (1935) to the Medical Department containing a diagnosis of major depression with a return to regular full-time work on November 4, 1996.

[181] On October 30, 1996, the patient saw his attending physician again, who filled out another medical certificate (1935) scheduling a return to part-time work for his patient, with no restrictions, as of December 2, 1996.

[182] Pierre Bergeron met with Dr. Condé on October 31, 1996. He noted that the Complainant told him he had been feeling better for a month; he was playing sports once a week; his appetite had increased and he was gaining weight; he felt less tired and his physical abilities were increasing; his memory and concentration were fine. Dr. Condé also noted that the patient no longer cried or had suicidal thoughts or sadness.

[183] Dr. Condé expressed the opinion that the patient's condition had improved. He recommended that he continue psychotherapy, increase his daily activities to continue getting in shape and take the medication prescribed by Dr. Perrier.

[184] Since the return to work that Dr. Perrier scheduled was December 2, 1996, he made an appointment with the Complainant for November 26, 1996 for a back-to-work examination. At that appointment, Dr. Condé noted that the patient was doing much better. He told him that he had increased his physical activity, that his morale was good and that he was in good spirits.

[185] He also informed him that he felt less tired and that his energy had increased. He felt better because of the massage therapy and psychotherapy.

[186] Dr. Condé concluded that the depression had definitely improved and he approved the attending physician's recommendation for a return to part-time work with no restrictions starting December 2, 1996. However, with the Complainant's agreement, he recommended a gradual return to duty, namely two consecutive days during the week of December 2, 1996, three days a week from December 9, 1996 to January 3, 1997 and five days a week starting January 6, 1997.

[187] On December 9, 1996, in Dr. Condé's absence, the Complainant met with the nurse, Linda Doyter, in Dr. Condé's office. She recorded in the file that Pierre Bergeron worked December 2 and 3, 1996. His concentration was good but he felt physically exhausted. She noted that the patient informed her that morale-wise he was fine; he had a new job in which he felt pressure due to his closely monitored performance. He was to see his physician again on December 12, 1996. The nurse decided that, during the week of December 9, the employee would not return to part-time work with no restrictions at a rate of three days a week as planned, but two non-consecutive days a week instead.

[188] An appointment was made with Dr. Condé for December 17, 1996 for a follow-up back-to-work examination. Pierre Bergeron did see Dr. Condé on December 17, 1996. The Complainant told the physician that he had worked two days the previous week and felt that his performance at work was good. The Complainant also told him that he felt physically capable of working and that he was ready to increase his performance and time at work. He claimed to have good morale, no symptoms of depression and no crying or sadness. In addition, his appetite was good and he was sleeping well with his medication.

[189] In light of these facts, Dr. Condé concluded that the Complainant's condition had improved even more, that he felt fit and that he had no depression symptoms. With Pierre Bergeron's consent, Dr. Condé recommended a return to part-time work with no restrictions at a rate of four days a week for the current week and full time with no restrictions as of December 23, 1996. Since he felt that the patient's progress was satisfactory, Dr. Condé did not plan to see him again.

[190] On December 11, 1996, Pierre Bergeron consulted his attending physician for a follow-up examination. The physician noted that his patient had no mood disorders. Dr. Condé felt that on that date, the Complainant's attending physician considered him recovered from depression and fit for duty.

[191] On January 14, 1997, Dr. Condé met with the Complainant, who told him that he had not worked on December 23 and 24, 1996. He had taken vacation over the holidays. He started back to work full time on January 6, 1997 and felt that his performance was good.

[192] The patient also told him that he had been laid off due to his lack of experience and inability to do the job. Dr. Condé observed that the Complainant accepted the situation calmly; he cried a bit; he exhibited good judgement and good appreciation of the situation. He was hoping to be called back to work. He explained that his diagnostic, based on his impression, was that the patient's calm, controlled reaction to his layoff and the absence of depression symptoms demonstrated that he had recovered from the depression.

[193] He also noted that, on January 13, 1997, the Complainant saw his attending physician, who observed that he had no depressive disorder. He had reduced the Paxil intake from 40 to 20 milligrams.

(vi) Josée Ferron

[194] Josée Ferron was hired at Télébec in April 1992 and has held the position of Human Resources Manager, since January 1996. She was involved in selecting, hiring and moving staff, whereas Lyne Doroftei was assigned to everything relating to labour relations. It has only been since 1999 that she has been responsible for labour relations.

[195] At the beginning of May 1996, a request was submitted for filling two installer/repairman positions in Val-d'Or. On May 7, 1996, she posted the two positions on the bulletin boards in the work centres (Exhibit I-14). The document identified the position, location, duration, minimum requirements, job summary and the expected date of employment. The witness explained that the jobs were posted for five business days, in accordance with the collective agreement, and were taken down on May 13, 1996.

[196] During that time, employees had to apply using a transfer request, as Pierre Bergeron did (Exhibit P-13) on May 13, 1996. The witness stated that five candidates applied, namely Guy Desgagné, Normand Rouleau, Pierre Bergeron, Daniel Lemieux and Serge Chayer.

[197] Josée Ferron stated that, once the posting process was over, she interviewed the candidates who had applied to determine their skills and qualifications for the position. Interviews are sometimes conducted over the telephone, as was the case with the Complainant, who was in La Sarre, whereas the human resources office was in Val-d'Or. The witness conducted the telephone interview with the Complainant on May 22, 1996, and the interview was 30 to 45 minutes long.

[198] The witness asked the Complainant some questions to determine whether he had the minimum requirements for the position, to evaluate his ability to work on a team, his sense of cooperation, technical knowledge, independence, sense of responsibility, and his perspective on dealing with customers.

[199] The witness stated that she also evaluated the candidate's team spirit, ability to deal with ambiguity, leadership, decision-making skills and knowledge of English, which was considered an asset.

[200] The witness stated that, after the interview, she prepared a written evaluation (Exhibit I-23). She wrote in it that the Complainant would have to improve his leadership and that his career motivation was low since he seemed unmotivated after the layoffs and appeared to not understand the current business context; his level of technical knowledge was low.

[201] Following the candidate interviews, the witness stated that she met with the Service Manager Serge Faubert, and Alain Rivard or Claude Mayrand to select the candidates. After discussion, one candidate was selected, namely Daniel Lemieux, for one installer/repairman position, while for the second position, they hired someone externally, Alain Brouillette, on June 17, 1997.

[202] The witness stated that Daniel Lemieux was notified that he had obtained the position. However, he withdrew, with the result that one installer/repairman position was still not filled. Therefore, a second review of the candidates was conducted along with Serge Faubert and the witness. She stated that she stressed to Serge Faubert that the Complainant had basic knowledge, that he should be given a chance and that it would, at any rate, be a probationary period for the position and that he could always be put back on the callback list as a splicer if he were unable to meet the requirements of the installer/repairman position.

[203] The witness stated that it was eventually decided to award the installer/repairman position to the Complainant, which he accepted on July 22, 1996, with a start date of August 6, 1996.

(vii) Richard Leblanc

[204] Richard Leblanc has been an employee at Télébec in Val-d'Or since 1990 as Manager of Access Network Management. His responsibilities include analyzing the sectors that Télébec serves in order to ensure that network capacity meets customer needs and to ensure network security. His responsibilities also include designing plans for new projects.

[205] He stated that, in the fall of 1997, he was the project leader for a six-month project in Chibougamau involving the replacement of an obsolete, congested network. The work was assigned to a subcontractor. There was approximately four to six weeks of cable-splicing work that had to be done by a splicer. A request for this was sent to the Human Resources Department (Exhibit I-18) and the Complainant was temporarily called back to work for the scheduled period (Exhibit P-28).

[206] Richard Leblanc recalled that, around the end of November 1997, Pierre Bergeron contacted him to find out whether his temporary position would indeed

be over at the end of the six-week period. The witness contacted his immediate supervisor, Yvon Hallé, to suggest keeping the Complainant at work to help the subcontractor. Yvon Hallé decided to keep Pierre Bergeron on the job until December 24, 1997. The witness informed the Complainant of this decision, which he was apparently satisfied with. This employment extension was not confirmed in writing with the Complainant.

[207] Richard Leblanc recalled that Pierre Bergeron's employment conditions stipulated that, after 10 consecutive days of work, he had to take four consecutive days off. Pierre Bergeron told him that he would be in Chibougamau from December 1 to 24, 1997. Richard Leblanc told him that if he intended to stay in Chibougamau, he would have to respect the days-off condition.

[208] The witness stated, contrary to the Complainant's claims, that he had not told him that his employment extension was for an indefinite period because he did not have the authority to make such a decision and that he was complying with instructions from his immediate supervisor, Yvon Hallé.

[209] Richard Leblanc recalled that, on December 9, 1997, he received a telephone call from Pierre Bergeron informing him of his hospitalization in Chibougamau; he asked why he was hospitalized. The Complainant told him that he was not injured, but did not provide further details.

[210] The witness contacted Lyne Doroftei in the Industrial Relations Department to find out the procedure to follow in those circumstances, particularly since the Complainant's employment was to end on December 24, 1997. She asked him to send her, by email, the information regarding the agreements with the Complainant and the date his employment would end, which the witness did on December 10, 1997 (Exhibit I-12). She also told him that he would be issued a layoff notice so that he could forward it to the Complainant right away (Exhibit P-30).

[211] After receiving and signing the document, the witness learned that Alain Rivard was going to Chibougamau and asked him to go see the Complainant in the hospital to issue him the layoff notice. The witness specified that the quality of the Complainant's work as a splicer, while under his responsibility, was very good and that he did not end his employment because of his health conditions.

III. THE ACT

[212] Section 7 of the *Act* stipulates that directly or indirectly to refuse to employ or continue to employ an individual or differentiate adversely in relation to that individual in the course of employment is a discriminatory practice if it is based on a prohibited ground. Section 3 of the *Act* specifies that disability is a prohibited ground.

[213] Section 14 (1) of the *Act* provides that harassing an individual in the course of employment is a discriminatory practice if it is based on a prohibited ground.

IV. BURDEN OF PROOF

[214] The Supreme Court's decision in O'Malley¹ established that it is first the Complainant's responsibility to establish a *prima facie* case of discrimination. A *prima facie* case is one which covers the allegations made and which, if believed, is complete and sufficient to justify a verdict in the Complainant's favour in the absence of an answer from the Respondent.

V. ANALYSIS

A. Was the Complainant adversely differentiated against in the course of employment because of a disability (depression)?

(i) Layoff on December 6, 1995

[215] The evidence shows that the Complainant had held a position as a splicer with the Respondent since 1990. On November 20, 1995, he was notified of his layoff effective December 6, 1995. His name was placed on a callback list. The collective agreement gave him recall rights for 24 months following his layoff.

[216] The Complainant maintained that the Respondent did not allow him to exercise his bumping rights and stay employed. The evidence shows that the Complainant's claim was unwarranted. In fact, the Complainant's seniority did not allow him to exercise his bumping rights. It should be pointed out that, due to not being able to exercise his bumping rights, the Complainant filed a grievance to assert that right, but the Teamsters Union later withdrew the grievance.

[217] The Complainant suggested that his layoff in December 1995 and his inability to exercise his bumping rights made him feel insecure and fearful of losing his job for good, which were the cause of his depression in August 1996.

The evidence shows that at the end of 1995 the Respondent undertook a major administrative reorganization of the company, which resulted in many layoffs. Indications are that the Complainant, who had had steady employment with the Respondent for over nine years, was affected by a shortage of work and that he feared for the future of his employment with the Respondent. However, the Complainant did not submit any evidence demonstrating that he had any disability at all during his layoff starting December 6, 1995, except that he had experienced depression 11 years earlier.

[218] Without dismissing the Complainant's claim that the events he experienced caused his depression in August 1996, it remains that there is no evidence leading to a conclusion that the Complainant was laid off because of a disability.

(ii) Layoff on January 24, 1997

[219] The Complainant started back to work on December 2, 1996 following a sick leave for depression that arose in August 1996. He believed that the Respondent laid him off because of his health condition.

[220] The evidence shows that, after he was laid off, the Complainant was temporarily called back to work successively, to his splicer or lineman position, as of March 26, 1996. The evidence also shows that on May 7, 1996, the Respondent posted two installer/repairman positions in Val-d'Or and that the Complainant and four other employees applied.

[221] Recall that the Complainant performed the duties of an installer/repairman when he was first hired on May 7, 1987 until April 23, 1990, when he obtained a splicer position.

[222] The evidence shows that, at that time, most of the work of an installer/repairman was done in the residential sector. It involved running service wires from poles to residences and installing wires in the residence to give access to the telephone set connections. The installer/repairman would deliver the telephone sets to customers. Repairs involved checking the resistance on the telephone line and the condition of the ground. Installer/repairmen were used only occasionally in the business sector. The work was limited to cabling to allow the installation of small telephone systems and doing programming using predetermined fixed registers.

[223] The evidence reveals that, in the business sector starting in 1992, the advent of the microprocessor led to numerous telephone systems with a greatly expanded programming language enabling phones to provide customers with enhanced services. Video-conferencing and the Internet then came on the scene. As a result,

programming required installer/repairmen to be analysts. They also had to be in constant contact with customers to determine their needs and sell them equipment geared to those needs. The work of installer/repairmen was becoming less required in the residential sector because the network had been upgraded. Repairs and new system installations were therefore less frequent.

[224] The evidence shows that the posting for the installer/repairman positions included a description of the minimum requirements. The Complainant acknowledged that he did not meet some of the requirements, such as basic data transmission knowledge. Regarding the requirement for knowledge of various products and maintenance services ("Norstar" series and others) that was an asset, he admitted that he was not familiar with the company's products on the market at that time because he had installed only one "Norstar" system when he was an installer/repairman. As to the requirement for knowledge of programming principles, the Complainant stated that he did not know much about programming principles. Regarding the requirement for being able to transact and communicate with customers, the Complainant acknowledged that in his work as an installer/repairman, he rarely had had to transact and communicate with customers.

[225] The evidence revealed that, after receiving the applications from employees interested in the installer/repairman positions, Josée Ferron, Human Resources Manager at that time, interviewed each candidate to evaluate their qualifications and skills for the positions. Josée Ferron conducted a telephone interview with the Complainant and afterwards came to the conclusion that the Complainant lacked leadership and motivation and that his level of technical knowledge was not very high. She prepared an evaluation of each candidate and sent them to Manager Serge Faubert and supervisor, either Alain Rivard or Claude Mayrand. One employee application was selected and, for the second position, a new employee was hired. However, the selected applicant withdrew. After a second review, it was agreed that the Complainant would be awarded the position, which he accepted.

[226] The evidence shows that the Complainant started his new job on August 2, 1996 but that he had to be away from work on August 10, 1996 due to major depression.

[227] The evidence shows that Dr. Condé, the Respondent's medical consultant, met with the Complainant several times. At the first meeting with the Complainant, Dr. Condé noted that, according to his attending physician's diagnosis, he was suffering from major depression brought on by a change in his level of employment, a move, and the loss of a loved one, namely his dog. He recommended that the patient continue psychotherapy. He saw the patient again on October 31, 1996, who informed him that he was feeling better and less tired.

The Complainant felt physically more capable. Dr. Condé learned from the patient that he no longer cried or had sadness or suicidal thoughts. He concluded that the patient's condition had improved. Dr. Condé saw the Complainant again on November 26, 1996 to review the possibility of him returning to work. After learning from the Complainant that he was doing fine, that his morale was good, that he was in good spirits, and that his energy had increased, Dr. Condé believed that the patient's condition had sufficiently improved that he could approve his physician's recommendation for the patient to return to work gradually with no restrictions as of December 2, 1996.

[228] The evidence shows that the Complainant started work as an installer/repairman in Val-d'Or on December 2, 1996. His immediate supervisor was Alain Rivard and, in his absence, Claude Mayrand. He returned to work gradually, starting with two consecutive days that week. He was assigned to transferring lines in Senneterre and was then assigned to Télébec Mobilité to help an installer/repairman with the installation of a 032 telephone system.

[229] The evidence reveals that, during the week of December 9, 1996, the Complainant was to work three non-consecutive days, but that he worked only two. His immediate supervisor, Alain Rivard, tasked him with installing a "Norstar" telephone system at the Brasserie La Pépie. While the Complainant was installing this system, Alain Rivard went to the work site and learned from the customer that the Complainant was having problems with programming, that he had told her it was not his area. She was concerned that the deadline for the work would not be met.

[230] The evidence unquestionably shows that Alain Rivard met with the Complainant to discuss the situation and that the Complainant told him he did not want to work as an installer/repairman because he preferred being a splicer. In light of these facts, Alain Rivard decided to assign the Complainant some less demanding work. He assigned him to work with two other installer/repairmen, including a union representative, at Aubé Pontiac Buick.

[231] The evidence shows that, at that meeting, the Complainant told Alain Rivard about his health condition. Alain Rivard pointed out to the Complainant that there was nothing indicating to him that there were any restrictions on his ability to do the work required and that he had to comply.

[232] The evidence reveals that, to make the task easier for the Complainant, Alain Rivard assigned him some work with two other installer/repairmen for refitting some wiring with wire covers at Val-d'Or Performance. Once again, Alain Rivard was informed that the quality of the Complainant's work left something to be desired.

[233] The evidence shows that the Complainant worked on December 16, 18 and 20, 1996. During the week of December 16, 1996, the Complainant asked permission to be away from work on December 23 and 24, 1996, which he was not granted because the need for staff did not allow for it prior to the holidays.

[234] The evidence shows that on December 20, 1996, at the end of the day, the Complainant felt exhausted and on the verge of tears. He told the secretary that he was leaving work. He partied over the weekend and was unable to come into work on December 23 and 24, 1996 due to gastro-enteritis.

[235] The evidence shows that the Complainant went to work on January 6, 1997. Alain Rivard, again trying to help the Complainant, assigned him some pre-wiring work in a government building for a 4:00 p.m.-to-midnight shift.

[236] The evidence shows that, on January 7, 1997, the Complainant was called to a meeting with his immediate supervisors Claude Mayrand and Alain Rivard. He was criticized for leaving work on December 20, 1996 without informing his immediate supervisor. He was also criticized for being away from work on December 23, 1996 by taking unauthorized vacation while being away due to illness. He was also told that, even though he had been given relatively easy tasks, his productivity still left something to be desired.

[237] The evidence reveals that, during the week of January 6, 1997, the quality of the pre-wiring work was good but that his productivity was still poor.

[238] The evidence shows that, on January 8, 1997, Alain Rivard and Claude Mayrand met with the Director Serge Faubert to inform him of their concerns about the Complainant. After thoroughly reviewing the situation, Alain Rivard concluded that the Complainant was unable to perform the installer/repairman duties.

[239] The evidence shows that, after obtaining a posted installer/repairman position, the Complainant was on a probationary period pursuant to clause 13.10 of the collective agreement, which provides that [translation] "if the employee does not demonstrate the ability to perform the new duties in accordance with company standards within 120 days following the promotion or transfer, the employee shall return to his/her prior position and location" During that period, the employer can terminate the probationary period if it concludes that the employee cannot meet the normal requirements of the work.

[240] The evidence shows that on January 10, 1997, the Respondent informed the Complainant that he would be laid off as of January 24, 1997 on the grounds that, during his time as an installer/repairman, he failed to demonstrate the ability to

perform his new duties in accordance with the required standards. The Complainant was returned to the callback list as a splicer with recall rights for 24 months.

[241] The evidence shows that the Complainant challenged his layoff by filing a grievance that was subsequently withdrawn by the Teamsters Union. After the grievance was filed, the grievance committee met and the minutes for the discussion were prepared (Exhibit P-65). The Complainant stated that he had applied for the installer/repairman position not because he was interested in the job, but solely to obtain work.

[242] The evidence shows that the Complainant met with Dr. Condé on December 17, 1996 for a follow-up examination. He informed the physician that he felt physically ready to increase his time at work and his performance. He stated that his morale was good and that he had no depression symptoms, crying or sadness. Dr. Condé was of the view that the Complainant's condition had further improved and that he had no symptoms of depression. At his request, Dr. Condé saw the Complainant on January 14, 1997, and the Complainant told him that he had been laid off due to lack of experience and inability to do the work. Dr. Condé noted that the Complainant accepted the situation calmly and barely cried. He issued a diagnosis that the Complainant had recovered from his depression.

[243] When he returned to work on December 2, 1996, the Complainant already had previous experience as an installer/repairman. To help the Complainant become familiar with his new position, the Respondent assigned him some simple work installing a telephone system in the business sector. The work was not completed within the time frame normally allotted for that type of work. The Complainant was unable to do the programming and his customer interaction was weak. The Respondent assigned the Complainant some basic installer/repairman tasks, specifically cable pre-wiring, and the productivity standards were not met. Even though the work was simple, the Complainant's productivity did not improve.

[244] The Complainant's first obligation was to perform his work, even part time, to the satisfaction of the Respondent. I believe that, despite the fact that the Respondent gave him work involving basic tasks for an installer/repairman, the Complainant, who had applied for the position in order to have steady work and who, by his own admission, did not like that type of work, failed to demonstrate the ability to perform the duties of an installer/repairman. The Respondent was justified in terminating the Complainant's probationary period for the installer/repairman position and placing him on the callback list as a splicer.

[245] Moreover, I believe that the disability, namely the Complainant's depression, was not a determinant in the Respondent's decision-making. As such,

I accept Dr. Condé's unchallenged testimony that the Complainant was fit to return to work gradually with no restrictions. In addition, when the Respondent decided to terminate the Complainant's probationary period for the installer/repairman position, he was not experiencing any depression symptoms and was completely recovered. I therefore conclude, based on the evidence on this aspect of the case, that the Complainant has failed to demonstrate that his layoff on January 24, 1997 was due to disability, namely depression.

(iii) Layoffs in 1997

[246] The Complainant maintained that in 1997 he was temporarily called back and laid off several times. According to him, the Respondent wanted him to quit his job and acted knowing full well that he could not refuse a callback without risking his job. In addition, the Complainant claimed that, during the times he was called back, he was under specific working conditions that were not in accordance with those in the collective agreement that apply to permanent employees. As such, he believes that he was treated differently than permanent employees.

[247] The evidence shows that, at the end of 1995, the Respondent had to lay off many people. Some employees were placed on a callback list for 24 months from the date of their layoff. To reduce operating costs, the Respondent decided to resort to subcontracting. In light of this situation, the Teamsters Union and the Respondent, through letters of understanding, arranged specific working conditions for laid-off employees to enable it to call these employees back to work temporarily for various projects instead of subcontracting out the work.

[248] The evidence shows that the Complainant and all employees on the callback list were affected by the specific working conditions in the letters of understanding.

[249] The preponderance of the evidence indicates that employees on the callback list who would state that they were not available for being called back to work would not lose their jobs and would remain on the callback list.

[250] The evidence shows, by the Complainant's own admission, that each time he was called back, he accepted the specific employment conditions involved and did not file any grievances.

[251] The evidence shows that, when the Complainant was called back for the splicer position, the Respondent was only complying with the provisions of the collective agreement with respect to calling back laid-off employees on the basis of their seniority and ability to carry out the work required.

[252] Based on the evidence submitted, I am not satisfied that the Complainant's layoffs and callbacks for temporary jobs by the Respondent was to encourage him to quit his job. On the contrary: the Respondent called the Complainant back to work in accordance with the provisions of the collective agreement with respect to calling back laid-off employees. If it had acted otherwise, it would have interfered with the Complainant's rights. Moreover, since the specific working conditions affected all employees on the callback list, he was not treated differently, because he was one of the employees on that callback list.

(iv) Layoff on December 24, 1997

[253] The Complainant argued that the Respondent decided to lay him off on December 24, 1997 because of his health condition, namely depression.

[254] The evidence shows that the Complainant accepted a temporary callback as a splicer in Chibougamau starting October 20, 1997 for a period of four to six weeks.

[255] The Complainant maintained that, at the end of November 1997, his immediate supervisor informed him that his job would be extended for an indefinite period of time. However, the Complainant's immediate supervisor stated instead that he had informed the Complainant that his job would end on December 24, 1997.

[256] The evidence reveals that, at the beginning of December 1997, the Complainant started feeling depression symptoms again. He consulted a physician in Chibougamau, who prescribed Paxil for him. He had to be hospitalized in Chibougamau on December 9, 10 and 11, 1997 due to a bad reaction to the medication, and on December 11, 1997, he again met with the physician in Chibougamau, who issued a medical certificate with a diagnosis of depression. While in the hospital, the Complainant notified his immediate supervisor but did not specify the reason for his hospitalization.

[257] The Complainant's immediate supervisor contacted the Industrial Relations Department to determine the procedure to follow, given that the Complainant's job was to end on December 24, 1997. He sent a memo to that department indicating that he had informed the Complainant of his layoff effective December 24, 1997. A layoff notice for the Complainant was prepared on December 10, 1997, and Alain Rivard issued it to him that same day at the Chibougamau hospital.

[258] The evidence on this leads me to conclude that the Complainant's health condition was not a determinant in the Respondent's decision to end the

Complainant's job on December 24, 1997. I accept the version from the Complainant's immediate supervisor, rather than the Complainant's version, that his layoff was effective December 24, 1997. Moreover, it is clear that, at the time that the Respondent notified the Complainant of his layoff, in other words December 10, 1997, it was unaware of the Complainant's depressed condition.

B. Was the Complainant harassed by the Respondents in the course of employment because of his disability (depression)?

[259] Under section 14 (1) (c) of the *Act*, harassing an individual in the course of employment is a discriminatory practice when based on a prohibited ground. According to the provisions in section 3 (1) of the *Act*, disability is a prohibited ground.

[260] The Quebec Human Rights Commission defines harassment in the workplace as follows:

[translation]

"Conduct manifested through repeated words, actions, gestures, etc. that are vexatious or demeaning and directed at another person or group of people for any of the grounds listed in section 10 of the Charter. The harassment of an individual may involve race, gender, sexual orientation, religion, handicap, etc." ²

[261] The Tribunal must determine the seriousness of the inappropriate behaviour. In *Dhanjal*, the Tribunal specified that:

...the seriousness of allegedly harassing conduct must be assessed not according to the criterion and perspective of the `reasonable person`, who would necessarily be a person belonging to the racial majority, but rather according to the criterion and perspective of the `reasonable victim`.

[262] The Tribunal added:

Moreover, while the subjective test of the complainant's perception, according to his or her own personality and sensitivity, is relevant and necessary, this is so only at the stage of assessing the actual harm caused to the victim and the damages that result... ⁽³⁾

[263] The Tribunal must also determine the repetitiveness of the inappropriate behaviour. In *Commission Scolaire des Deux-Montagnes*, the Tribunal said the following in that regard:

[translation]

"The durability that the vexatious conduct must also have, to constitute harassment, can therefore be established based on the repetitiveness or seriousness of certain actions, to the extent that their effect has a lasting impact."⁴

[264] The Complainant was absent from work on August 10, 1996 due to illness. During the following week, Claude Mayrand, a representative of the Respondent, visited him at his residence to give him the medical form that he was to have his attending physician fill out. The Complainant's position is that the Respondent's real purpose for that visit was to ensure that he was indeed sick, which he considered harassment.

[265] I cannot accept the Complainant's position. In fact, any employee who expects to be absent from work due to illness for eight days or more must use a medical form, duly filled out by his/her attending physician, to inform the employer of the nature of his/her illness and how long he/she will be away from work. I do not believe that a reasonable victim would consider the action by the Respondent's representative as harassment.

[266] The Complainant suggested that the Respondent's representative's driving by his residence repeatedly between August 10, 1996 and December 2, 1996, to visit his father and sister constituted harassment. I do not believe that the Respondent's representative's actions, although repetitive, can be considered vexatious and demeaning and sufficient to cause a reasonable victim to conclude that he/she was harassed.

[267] Specifically regarding Alain Rivard, the Complainant maintained that the latter discriminated against him by writing phoney letters of reprimand and placing them in his file unbeknownst to him. The only document produced in support of that allegation was a memo from Claude Mayrand to Alain Rivard describing the circumstances of the Complainant's leaving work on December 20, 1996 and his absence on December 23, 1996. However, he admitted that he never officially received any written reprimands from the Respondents. I conclude from this that this allegation of harassment is completely groundless.

[268] The Complainant also maintained that, during his part-time employment between December 2, 1996 and January 24, 1997, he was the victim of harassment because of his health condition from Claude Mayrand and Alain

Rivard. The alleged harassment occurred during frequent meetings with the Respondent's two representatives in the form of unwarranted rows intended to crush and humiliate him. The preponderance of evidence shows that, during those meetings, the Respondent's two representatives did indeed inform the Complainant, as required, that they were not satisfied with his conduct on December 20 and 23, 1996. Moreover, during that period, according to Dr. Condé's unchallenged testimony, which I believe is completely credible, the Complainant had virtually recovered from his depression and no longer had a disability.

[269] The preponderance of evidence is also such that the meetings in question did not end with the Complainant crying, as he stated. If that had been the case, he would surely have brought it up during his appointments with Dr. Condé on December 17, 1996 and January 14, 1997. The opposite was true, however, because the Complainant stated to him on December 17, 1996 that his morale was excellent, he was not crying or sad, and during the January 14, 1997 visit, he told Dr. Condé that he accepted the notification of his layoff calmly and cried only a bit.

[270] I conclude from this that the words that Claude Mayrand and Alain Rivard exchanged with the Complainant from December 2, 1996 to January 24, 1997 do not constitute harassment of the Complainant because of a disability.

VI. CONCLUSION

[271] I believe that the Complainant has failed to discharge his burden of establishing a *prima facie* case that:

Télébec Limitée discriminated against him by treating him in an adversely differential manner in the course of his employment because of his disability, contrary to section 7 of the *Canadian Human Rights Act*.

[272] Télébec Limitée discriminated against him by refusing to provide him with a harassment-free workplace because of his disability, contrary to section 14 of the *Canadian Human Rights Act*.

[273] Alain Rivard discriminated against him by harassing him in the course of his employment because of his disability, contrary to section 14 of the *Canadian Human Rights Act*.

THEREFORE:

The complaints are dismissed.

Roger Doyon

OTTAWA, Ontario
May 21, 2004

¹Ontario Human Rights Commission and O'Malley v. Simpson Sears Ltd. [1985],
3 S.C.R., pp. 536 to 558

¹

²Commission des droits de la personne du Québec, Orientation de la Commission
des droits de la personne face au harcèlement en milieu de travail [1987]
D.L.Q. 491-492

³Dhanjal v. Air Canada [1996] C.H.R.D. NO4

⁴H.R.T. v. Commission scolaire des Deux-Montagnes [1993] 19 CHRR, D1

PARTIES OF RECORD

TRIBUNAL FILE:	T741/4602 and T742/4702
STYLE OF CAUSE:	Pierre Bergeron v. Télébec Limitée and Alain Rivard
DATE AND PLACE OF HEARING:	Montréal, Quebec September 10, 11, 12, and 15, 2003 September 16, 17, 18 and 19, 2003 November 24, 25, 26 and 27, 2003 January 26, 27 and 29, 2004
DECISION OF THE TRIBUNAL DATED:	May 21, 2004
APPEARANCES:	
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Reno Vaillancourt

For the Canadian Human Rights Commission
For Télébec Limitée and Alain Rivard