Federal Court  Cour fédérale

Date: 20180615

Docket: T-1419-16

Citation: 2018 FC 618

[ENGLISH TRANSLATION]

Ottawa, Ontario, June 15, 2018

PRESENT: The Honourable Mr. Justice Gascon

BETWEEN:

EVEDA NOSISTEL

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Eveda Nosistel, is a former employee of the Correctional Service of Canada [CSC], where she worked as a finance manager. Ms. Nosistel is seeking judicial review of a decision made by CSC in July 2016 in which CSC declined to pursue three grievances [Grievances] she filed about how her complaints of psychological harassment were handled

[Decision]. In the Grievances, Ms. Nosistel intended to argue that CSC senior management had violated the rules of procedural fairness and of natural justice in handling her harassment complaints filed in July 2013 against four of her former colleagues at CSC. Those complaints were the subject of a CSC decision in September 2015 that reiterated the conclusions of four reports resulting from the workplace investigation carried out in response to Ms. Nosistel's allegations [Investigation Reports]. Both the Investigation Reports and the September 2015 decision concluded that Ms. Nosistel's complaints were unfounded.

[2] In her notice of application filed in August 2016, Ms. Nosistel sought a series of conclusions ranging from obtaining the acknowledgement of inconsistencies and violations of the principles of natural justice regarding the management of her harassment complaints to full re-establishment of integrity and reputation, and the assurance of fair restitution. In her memorandum of fact and law filed in June 2017, Ms. Nosistel made an even longer list of remedies sought. In addition to a declaration that CSC erred in law in making its decision with regard to one of her Grievances and violated the rules of procedural fairness, she is asking the Court to set aside the conclusions of the Investigation Reports and the associated decisions regarding the management of her harassment complaints and to award her damages including, among other things, her loss of wages since August 2013 and punitive damages. In this regard, Ms. Nosistel is asking the Court to convert her application for judicial review into an action pursuant to subsection 18.4(2) of the *Federal Courts Act*, RSC 1985, c F-7 [FCA].

[3] Appearing on behalf of CSC, the Attorney General of Canada [AGC] acknowledges that Ms. Nosistel's Grievances were not subject to appropriate decisions under the formal grievance process set out in the *Federal Public Sector Labour Relations Act*, SC 2003, c 22, s 2 [PSLRA]

and the *Agreement between Treasury Board and the Association of Canadian Financial Officers* of 2013 [Agreement] applicable to Ms. Nosistel. Therefore, the AGC agrees to the case being referred back to CSC for reconsideration by an objective party, that is, by a person who has not been involved in Ms. Nosistel's case to date. However, the AGC is opposed to the other reliefs sought by Ms. Nosistel.

[4] At the hearing before this Court and in her written submissions following her notice of application, Ms. Nosistel emphasized that the decision that is the focus of her application for judicial review is not the July 2016 Decision on her Grievances, but rather CSC's decision of September 2015 to accept the Investigation Reports and dismiss her harassment complaints. Ms. Nosistel states that her application is intended to raise the violations of the principles of procedural fairness and natural justice that, in her opinion, tainted CSC's entire approach to addressing her psychological harassment complaints, from the investigation itself to all of the decisions that resulted.

[5] One thing emerges from the file submitted by Ms. Nosistel: it is far from being clear. Ms. Nosistel's approach is variable at best and creates a sense of confusion about the real objective of her application for judicial review. The AGC has agreed to refer the case back to CSC so that the administrative decision-maker can make the decisions it failed to make on Ms. Nosistel's Grievances. However, Ms. Nosistel says she is seeking more and argues that, all in all, that is not the objective of her application for judicial review. Under the circumstances, I share the AGC's opinion that Ms. Nosistel's application raises the following three main issues:

- What is the subject of the application for judicial review Ms. Nosistel submitted to the Court?

- Considering the AGC's consent to the case being referred back to CSC so Ms. Nosistel's Grievances can be properly addressed according to the applicable procedure, what corrective measures should the Court order?

- Is it appropriate to convert Ms. Nosistel's application for judicial review into an action?

[6] For the reasons that follow, Ms. Nosistel's application will be partially allowed. I am of the view that, under the circumstances, the case should be referred back to CSC so that the procedure for addressing the Grievances Ms. Nosistel filed can proceed, and decisions can be made by CSC in accordance with the administrative procedure in place. Contrary to Ms. Nosistel's claims, this application for judicial review does not concern the Investigation Reports, the process followed in addressing her harassment complaints or CSC's September 2015 decision rejecting them. The subject of the application is rather CSC's decision on her Grievances, in fact, the lack of decisions on their merit. Furthermore, I am not convinced that the conditions are met for the Court to render the directed verdict and order the various corrective measures Ms. Nosistel is seeking. It is the role of CSC—not the Court—to evaluate Ms. Nosistel's Grievances and first determine whether her criticisms about how her psychological harassment complaints were handled and the process followed are founded. Lastly, for both procedural and substantive reasons, this is not a situation where the Court should exercise its discretion to convert Ms. Nosistel's application for judicial review into an action.

II. Background

A. *Facts*

[7] In July 2013, Ms. Nosistel filed a complaint for psychological harassment against four CSC employees and colleagues. That complaint was declared admissible in August 2013, and an external consultant to CSC began an investigation in October 2013. Since that investigation involved four people, four separate investigation reports were prepared, which were completed in August 2015. All of the Investigation Reports concluded that Ms. Nosistel's harassment complaints were unfounded. On September 2, 2015, CSC made a decision accepting the conclusions as stated in the Investigation Reports. Since confidential information had to be redacted from the Investigation Reports, they were not finalized until September 30, 2015, and CSC's decision to accept them was communicated to Ms. Nosistel in early October 2015. In June 2015, that is, before the Investigation Reports were published, Ms. Nosistel resigned from her position at CSC and left the federal public service.

[8] Ms. Nosistel filed three individual grievances about how her harassment complaints were handled. On each occasion, she followed the grievance process set out in section 208 of the PSLRA and article 17 of the Agreement.

[9] A first grievance on how Ms. Nosistel was treated during the investigation of her complaints was prepared on February 10, 2015, before the Investigation Reports were completed. Ms. Nosistel alleges that she received no support during the investigation and was not allowed to access the documents at key and opportune times during the process, and that the

consultant and writer of the Investigation Reports did not give sufficient consideration to certain incidents. The status of this grievance remains ambiguous. Ms. Nosistel explains in her June 2017 memorandum that the grievance was [TRANSLATION] "aborted" (either by her or by CSC, which the evidence on file does not make it possible to determine). The AGC states that Ms. Nosistel never took the step of taking her grievance to the second level of the grievance process, as set out in article 17.10 of the Agreement and that, in the absence of instructions from Ms. Nosistel, the grievance was not subject to a decision as part of the grievance procedure set out in the Agreement. One thing is certain: nothing in the evidence on file demonstrates that CSC addressed this grievance.

[10] On November 18, 2015, Ms. Nosistel filed another grievance about the Investigation Reports. In this second grievance, she alleges several violations in how her harassment complaints were handled, disputes the conclusion that her complaints were unfounded and describes the apparent absence of [TRANSLATION] "integrity, comprehensiveness and impartiality" in the process and the Investigation Reports. In addition to a series of allegations about the investigation, the grievance also contains allegations that seem to go beyond the strict framework of the Investigation Reports, such as [TRANSLATION] "an abuse of power and bad faith" that CSC managers demonstrated toward her.

[11] The Assistant Commissioner in charge of human resources management at CSC, Elizabeth Van Allen, responded to Ms. Nosistel's grievance on January 28, 2016, informing her that the grievance was inadmissible. In her letter, Ms. Van Allen explained that, pursuant to the PSLRA, a [TRANSLATION] "former civil servant cannot file a grievance unless subject to a

disciplinary measure stemming from a suspension or dismissal set out in paragraphs 12(1)(c), (d) or (e) of the *Financial Administration Act*" and that, since the wording of the grievance contains none of these elements, it is invalid. The Assistant Commissioner added that even if she were wrong, the objectives of the Treasury Board Secretariat's *Harassment Prevention and Resolution Policy* are to promote conditions that are conducive to a safe and respectful work environment and to re-establish harmonious labour relations and that [TRANSLATION] "this policy does not apply to a former civil servant."

[12] As the AGC admitted in his memorandum of fact and law in June 2017 and his submissions to the Court, these remarks from the Assistant Commissioner were erroneous in law. Once again, in light of Ms. Van Allen's response, CSC did not make any decision on the merit of Ms. Nosistel's second grievance in accordance with the grievance procedure set out in the PSLRA and the Agreement and to which Ms. Nosistel had resorted.

[13] On March 4, 2016, Ms. Nosistel filed a third grievance, in which she refers to what she described as her [TRANSLATION] "resignation in disguise" from CSC in June 2015, on the grounds of the same allegations she tried to make in her first two grievances. Attached to this grievance from March 2016 were her first and second grievances from February and November 2015. In a letter dated March 3, 2016, addressed to the CSC Commissioner, Don Head, and attached to her grievance, Ms. Nosistel explains that [TRANSLATION] "all interactions and steps taken with CSC seemed to have been tainted by bad faith and a lack of transparency, procedural fairness, rigour and impartiality." Ms. Nosistel added that she was now appealing to Mr. Head through this last grievance so that he could remedy the

[TRANSLATION] “inaction, interference and bad faith, and the direction management chose to ‘manage’ her case” that led to her resignation from the public service after 10 years.

[14] On March 29, 2016, Mr. Head responded to confirm receipt of Ms. Nosistel’s letter and to say that he had been informed that the Canadian Human Rights Commission had begun an investigation process following a complaint Ms. Nosistel had made. The Commissioner explained that CSC would [TRANSLATION] “cooperate and provide the Commission with any information and document needed for its investigation.” The March 2016 response from Mr. Head provides little information on the handling of Ms. Nosistel’s third grievance.

[15] On June 14, 2016, Ms. Nosistel followed up with the Commissioner regarding her letter from March 29. She explained in this new letter to Mr. Head that [TRANSLATION] “the purpose of the last letter was to ask [him] to address the consequences of the inconsistencies noted during the inequitable treatment of internal remedies” she had initiated, that she had resubmitted [TRANSLATION] “the grievances not addressed by management” and that she was writing to inquire about her position and intentions for the next steps.

[16] Around July 27, 2016, the Commissioner responded to Ms. Nosistel. Mr. Head’s response was brief and terse. Mr. Head simply stated, in fewer than two lines, [TRANSLATION] “that the process used to respond to your grievances was consistent with policies.” Clearly, in his response, Mr. Head did not follow up on any of Ms. Nosistel’s three Grievances. Mr. Head’s decision to refuse to intervene in the Grievances is the subject of this application to the Court, and Ms. Nosistel’s notice of application for judicial review expressly references it. Once again,

one thing is clear: CSC did not make any decision on the merit of Ms. Nosistel's third grievance in accordance with the grievance procedure set out in the PSLRA and the Agreement. The AGC acknowledges this.

B. ***The other orders on file***

[17] Ms. Nosistel's application for judicial review has already resulted in a number of Court orders, which further clarify the somewhat unusual context of this case and the nature of the issues the Court must now address. Three orders are notable, and it is relevant to elaborate on them.

(1) The order by Justice Roy

[18] On January 31, 2017, Roy J. issued an order dismissing a preliminary motion presented by the AGC to have Ms. Nosistel's application for judicial review dismissed (*Nosistel v Canada (Attorney General)*, 2017 FC 122 [*Nosistel*]). The AGC alleged that the decision for which Ms. Nosistel was seeking judicial review was not rendered by a federal office and, moreover, was filed out of time. In his order, Roy J. found that, despite a lack of transparency and an application for judicial review he described as confused and messy, Ms. Nosistel's application does not seem completely without merit, to the point of dismissing it at the preliminary stage. According to Roy J., it is clear that CSC did not address some of Ms. Nosistel's Grievances.

[19] In his order, Roy J. focused in particular on the subject of Ms. Nosistel's application for judicial review. He indicated that Ms. Nosistel's application is "ostensibly related to a 'decision'

that was reportedly made by . . . Mr. Don Head" though it was not clear which decision it was (*Nosistel* at paras 1, 2). Roy J. consistently reiterates in several paragraphs of his order that Ms. Nosistel's application concerns the Grievances filed and not CSC's decision of September 2015 to accept the Investigation Reports. Given the position Ms. Nosistel subsequently adopted in her June 2017 memorandum and at the hearing before this Court about the scope of her application, it is relevant to cite the relevant passages from Roy J.'s order. Roy J. wrote that:

- "The decision made on September 2, 2015 is not the one that is subjected to the judicial review, and it is important to fully understand the difference." [emphasis added] (*Nosistel* at para 16);

- "At issue here are the three grievances that the Commissioner, rightly or wrongly, did not handle. There lies, in my opinion, the subject of this application for judicial review." [emphasis added] (*Nosistel* at para 18);

- "The Commissioner had been alerted to the existence of the 3 grievances. The one dated November 18, 2015, could have been the subject of a decision in January 2016. . . . As for the two other grievances, the file does not reveal how they were handled. These are the issues in the application for judicial review." [emphasis added] (*Nosistel* at para 25).

[20] Roy J.'s order therefore clearly, and repeatedly, establishes that the real issue and the subject of Ms. Nosistel's application for judicial review is how the Grievances were handled.

Given the vague and variable nature of the notice of application filed by Ms. Nosistel, Roy J. also asked her to elaborate on the details. Far from following this suggestion, Ms. Nosistel further clouded the case by stating, in the first words of her June 2017 memorandum, that her application for judicial review was to dispute the process for investigating her harassment complaints and CSC's September 2015 decision rejecting them. In so doing, she blatantly ignored Roy J.'s inarguable conclusions on the subject of her application. I will return to this later.

[21] Nevertheless, I observe that Ms. Nosistel never appealed Roy J.'s decision; on the contrary, she heavily referenced it both in her June 2017 memorandum and at the Court hearing.

(2) The order by Justice LeBlanc

[22] On April 11, 2017, LeBlanc J. made a second order on this file. He dismissed a second motion by the AGC, who wanted to consent partially to judgment in this case by proposing that the case be referred back to CSC so it could decide on Ms. Nosistel's Grievances. Ms. Nosistel was opposed to that motion, because the remedy proposed by the AGC was limited to referring the case back to CSC, which, rightly or wrongly, she no longer trusted, and disregarded the other remedies Ms. Nosistel is really seeking. In his order, LeBlanc J. said he was of the view that the partial solution at issue proposed by the AGC would not move the case forward. Furthermore, LeBlanc J. noted that the remedial powers of the Court are essentially discretionary in nature and that there are other forms of remedy available to the Court, including the "directed verdict" when circumstances allow it (*D'Errico v Canada (Attorney General)*, 2014 FCA 95 [*D'Errico*] at

paras 16–17, 20). LeBlanc J. therefore decided to leave it to the trial judge to resolve the entire case and the various remedies Ms. Nosistel is seeking.

(3) The order by Prothonotary Morneau

[23] The third order to be mentioned was made on October 11, 2017, by Prothonotary Morneau. Prothonotary Morneau dismissed an interlocutory motion by Ms. Nosistel to have sanctioned the inconsistencies and misconduct allegedly committed by CSC and counsel for the AGC in the handling of the case. In her motion, Ms. Nosistel was seeking, among other things, permission to submit a supplementary affidavit [TRANSLATION] "in light of the significant events that occurred after filing her applicant's record" and to account for CSC's [TRANSLATION] "disconcerting tactic" of returning to elements of the file that LeBlanc J. had dismissed in his order.

[24] In his decision, Prothonotary Morneau refused to allow the supplementary affidavit referring to certain alleged inconsistencies to be produced, since Ms. Nosistel had not described a situation that met the conditions for authorizing the filing of such an affidavit. Dissatisfied with the result, Ms. Nosistel appealed, but, in an order dated November 24, 2017, Justice Locke upheld Prothonotary Morneau's decision (*Nosistel v Canada (Attorney General)*, 2017 FC 1068 [*Nosistel 2*]). Ms. Nosistel also tried to appeal Locke J.'s order, but, in an order rendered on May 25, 2018, the Federal Court of Appeal dismissed Ms. Nosistel's motion to extend the time for filing a notice of appeal of Locke J.'s decision (*Eveda Nosistel v Correctional Service of Canada et al.* (May 25, 2018), Ottawa, FCA, 18-A-13 (motion to extend the time limits) [*Nosistel FCA*]).

(4) Docket T-536-17

[25] In addition to these orders in this case, it is also relevant to note that on April 12, 2017, Ms. Nosistel filed a second application for judicial review to this Court, in docket T-536-17. Ms. Nosistel was seeking to have a decision by CSC to refuse to provide her with personal information following a request for access to information submitted in June 2013 set aside, and to have the Minister in charge provide her with the documents and information she was requesting. An order by Justice Annis, dated October 10, 2017, dismissing Ms. Nosistel's appeal of a decision by Prothonotary Tabib is now being heard by the Federal Court of Appeal in this case. Prothonotary Tabib had allowed the Minister to file a confidential affidavit of documents at the centre of that other dispute.

[26] However, this second application has no bearing on this case.

C. *Relevant provisions*

[27] The PSLRA is the main act at the centre of this dispute. This act sets out the regime for labour-management relations in the federal public service and sets out a system for resolving disputes related to the employment conditions of federal public servants, including a grievance procedure. The relevant provisions of the PSLRA are found in sections 208, 209, 214 and 236 of the Act, which deal with individual grievances and the process for addressing them. For the sake of conciseness, these sections are reproduced in full in Appendix I to these reasons. They set out the PSLRA's specific regime for addressing grievances and define the scope of public service employees' rights to file an individual grievance on any decision or action by the employer

relating to their "conditions of employment." Ms. Nosistel's three Grievances were filed under section 208 of the PSLRA.

[28] The provisions of the PSLRA must be read in conjunction with article 17 of the Agreement on the grievance process, which concerns federal government financial officers like Ms. Nosistel. Once again, the relevant provisions of article 17 are reproduced in Appendix I.

D. *Standard of review*

[29] Given the AGC's admission that CSC failed to make the necessary decisions on Ms. Nosistel's Grievances and that the application for judicial review should therefore be allowed, at least in part, for that reason, the question of the applicable standard of review is not really an issue in this case.

[30] Suffice it to say that, when an application for judicial review raises questions of procedural fairness, the lawfulness of the decision at issue must be reviewed for correctness (*Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43). Where the correctness standard applies, no deference is required, and the Court must conduct its own analysis and substitute its decision for that of the administrative decision-maker's if they disagree (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 50). The question then is to determine whether the process the decision-maker followed was fair; the Court must establish whether the process at issue achieved the level of fairness required in the context of the rights affected (*Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1 at para 115). In other words, the question raised by the duty of procedural fairness is

not to determine whether the decision was "correct" but rather to determine whether the process the decision-maker used presented the required level of fairness (*Kazzi v Canada (Citizenship and Immigration)*, 2017 FC 153 at para 21; *Varadi v Canada (Attorney General)*, 2017 FC 155 at para 26; *Aleaf v Canada (Citizenship and Immigration)*, 2015 FC 445 at para 21).

III. Analysis

A. *The subject of Ms. Nosistel's application*

[31] The first issue in dispute raised by Ms. Nosistel's application for judicial review is the subject of her application and the administrative decision for which she is seeking the Court's intervention.

(1) Ms. Nosistel's claims

[32] In her notice of application in August 2016, Ms. Nosistel explicitly referred to the July 2016 Decision of the Commissioner not to proceed with the Grievances she had filed and said that her application concerned that decision. However, in the first paragraph of her June 2017 memorandum, Ms. Nosistel told the Court that her application was to contest [TRANSLATION] "the process of addressing the psychological harassment complaint, the investigation process, the decision resulting from the final report and the damages she suffered as a result." At the Court hearing, Ms. Nosistel reiterated that, in her opinion, her application concerned the violations of procedural fairness that occurred throughout the process of investigating her harassment complaints and in the resulting decisions.

[33] In his order dated January 2017, and solely upon reading Ms. Nosistel's notice of application, Roy J. already noted that the application was immersed in confusion (*Nosistel*, at paras 22, 24). I must note that with her written and verbal submissions, far from clarifying her application as Roy J. had invited her to do, Ms. Nosistel further muddled the details on the subject of her application.

[34] For the reasons that follow, I am of the opinion that Ms. Nosistel was wrong to claim that her application concerns the process of addressing her harassment complaints or CSC's September 2015 decision to accept the conclusions of the Investigation Reports. As the AGC correctly pointed out, Ms. Nosistel is confusing the process of addressing her complaints with the process of addressing her Grievances. Only the process of addressing her Grievances and CSC's failure to make decisions on them are at issue in this case.

(2) Roy J.'s conclusion

[35] If there was any doubt about this, Roy J. completely removed it in his January 2017 order. As Roy J. stated numerous times, Ms. Nosistel's application for judicial review concerns the Decision the Commissioner made in July 2016 and CSC's failure to address her Grievances. Furthermore, as previously mentioned, Roy J.'s order clearly specifies, no less than three times, that CSC's September 2015 decision finding that the harassment complaints were unfounded <u>was not</u> the subject of this judicial review (*Nosistel* at paras 16, 18, 25). Roy J.'s order therefore irrefutably establishes that Ms. Nosistel's application for judicial review does not concern the September 2015 decision, the events that led to her harassment complaints and the Investigation Reports or the process followed during the investigation.

[36] If Ms. Nosistel disagreed with that finding or believed that Roy J. had erred in concluding as he did, the appropriate action would have been to appeal his order. She did not do so, and the question of the subject of Ms. Nosistel's application is now *res judicata*. There is no need to return to it.

[37] I admit that it is astonishing to see, in her written submissions and at the Court hearing, Ms. Nosistel rely as she did on excerpts from Roy J.'s order that she considers favourable to her cause, while choosing to disregard just as directly and nonchalantly the finding made on the scope of her application, which Roy J. felt it appropriate and necessary to repeat three times in his order. With all due respect to Ms. Nosistel, a Court order is not an à la carte menu where a person may choose what suits their appetite at the time and close it, ignoring what they do not like.

(3) The prescription and the absence of an application for extension

[38] In any event, if the subject of Ms. Nosistel's application for judicial review and the decision underlying it really should have been the investigation process for her harassment complaints or CSC's decision in September 2015 confirming their rejection, that would not be of any great help to Ms. Nosistel, since her application for judicial review would then be barred under the FCA. Ms. Nosistel had been aware of the investigation process for her complaints and of CSC's September 2015 decision since October 2015 (or, at least, from the time of her grievance of November 18, 2015), that is, more than 10 months before she filed her application for judicial review in August 2016. Subsection 18.1(2) of the FCA is clear: an application for judicial review must be made within 30 days after the time the decision was first communicated.

[39] I would add that Ms. Nosistel did not make any request to extend the time with regard to CSC's September 2015 decision and the investigation process that led to that decision. I cannot help but observe that this is all the more decisive in this case because Ms. Nosistel was very familiar with this procedural mechanism. In fact, as part of the dismissal motion before Roy J. in January 2017, Ms. Nosistel had made a point of filing such an application to extend the time in case it was the Assistant Commissioner's decision on January 28, 2016, on her second grievance that should have been the focus of the judicial review (*Nosistel* at para 20). Conversely, no formal application to extend the time or intent to file such an application appears on the record with regard to CSC's September 2015 decision or the process of investigating Ms. Nosistel's complaints.

[40] For these reasons, there is no doubt in my mind that the subject of Ms. Nosistel's application for judicial review can only be CSC's decisions on her Grievances. Therefore, the Court does not have to rule at this stage on Ms. Nosistel's numerous criticisms of CSC's September 2015 decision accepting the conclusions of the Investigation Reports or the process of investigating her harassment complaints. I am not suggesting that Ms. Nosistel's persistent arguments about violations of procedural fairness and impartiality that could have marred the investigation process or CSC's decision could not turn out to be valid. However, that is not for the Court to decide at this stage, and Ms. Nosistel is taking the wrong approach in trying to argue these points in the application for judicial review she filed in this case.

(4) The *Renaud* decision

[41] At the Court hearing, Ms. Nosistel spoke at length about the decision of Justice Gagné in *Renaud v Canada (Attorney General)*, 2013 FC 18 [*Renaud*] to support her position that the Court can and should rule on violations of the principles of procedural fairness and natural justice she is citing. I do not agree with Ms. Nosistel's reading of that decision and, in my view, this decision does not really serve her point. In *Renaud*, like in Ms. Nosistel's situation, an applicant representing herself (Ms. Renaud) alleged a series of violations of procedural fairness in the procedure a federal office used to address her harassment complaints (*Renaud* at paras 67, 80). However, the application for judicial review that Gagné J. received concerned a decision to reject Ms. Renaud's grievances at the final level of the grievance process. Therefore, it is clear that, in that case, the internal grievance process adopted under section 208 of the PSLRA had been effectively followed, that a decision had been made by the administrative decision-maker at the final level, and that the Court had not received an application for judicial review until the end of the grievance procedure set out in the PSLRA. The decision Gagné J. reviewed was not the procedure used to address Ms. Renaud's harassment complaints or the alleged violations of procedural fairness, but rather the administrative decision-maker's decision to reject her grievances (*Renaud* at para 71).

[42] Moreover, Gagné J. explicitly stated that the respondent's argument was "correct" that the Court should "limit this judicial review to the decisions rendered by the administrative decision-maker at the final grievance level" and that the conclusions in the investigation reports should not be "attacked directly by application for judicial review" since the grievance procedure was open to Ms. Renaud (*Renaud* at paras 68–69).

[43] I note that, in her application for judicial review, Ms. Renaud argued "that the principles of procedural fairness were breached at various stages in the investigation and handling of her grievances" (*Renaud* at para 2). To determine whether it was appropriate to allow the application for judicial review, Gagné J. considered it wise to take a closer look at the procedure followed, including the conduct of the investigation that led to the rejection of Ms. Renaud's complaints, since the administrative decision-maker in that case relied essentially on the procedure and conclusions of the investigation reports to make its decision on the grievances (*Renaud* at para 71). Nevertheless, Gagné J. unequivocally stipulated that her decision in the judicial review was based on an analysis of the decision on the grievances [emphasis added]. Moreover, she added that an application for judicial review attacking decisions based on preliminary reports—which had not yet been subject to a final-level decision as set out in the PSLRA—"was clearly premature" (*Renaud* at para 70).

[44] It is precisely that decision on the merit of Ms. Nosistel's Grievances that is missing in this case, and this absence strongly distinguishes the facts in Ms. Nosistel's case from those in *Renaud*. As the AGC admits, CSC has made no decision on Ms. Nosistel's three Grievances, which is sufficient to allow the application for judicial review and refer the case back to the administrative decision-maker. The exercise of analyzing the circumstances of the complaints that Gagné J. conducted in *Renaud* to determine whether the judicial review sought should be allowed simply does not need to be performed here: the AGC acknowledges from the outset that the grievance process was violated, that the decisions that should have been made were not, that Ms. Nosistel's evidence and arguments were not properly considered, and that the case should be referred back to CSC for it to decide on the merit of Ms. Nosistel's Grievances.

B. ***The conditions for referral back to CSC and corrective measures***

[45] The second issue raised in Ms. Nosistel's application for judicial review is the nature of the corrective measures the Court should order in its judgment.

(1) The AGC's consent

[46] The AGC acknowledges that none of Ms. Nosistel's three Grievances were properly addressed in terms of the merit of her allegations pursuant to the grievance process set out in the PSLRA and the Agreement. The first grievance on February 10, 2015, apparently remained at the first level of the grievance process, and the AGC admits that no decision was made. Ms. Van Allen erred in law in her decision on the second grievance from November 18, 2015, because Ms. Nosistel was entitled to file a grievance on a situation that allegedly occurred in the course of her employment regardless of the subsequent termination of that employment (*R v Lavoie*, [1978] 1 FC 778 (FCA) at para 10; *Price v Canada (Attorney General)*, 2016 FC 649 at paras 23–32). With regard to the third grievance dated March 3, 2016, the AGC also admits that no decision was made.

[47] Moreover, the AGC acknowledges that Ms. Nosistel was entitled to fair and equitable decisions being made on each of her three Grievances following an analysis based on the facts in her case that considers the arguments she wished to present. The AGC is of the opinion that the appropriate remedy to the application for judicial review in this case is to refer the case back to the administrative decision-maker, that is, CSC, so that the three Grievances can be addressed according to the applicable grievance process.

[48] Ms. Nosistel argues that what the AGC is consenting to is still insufficient, and she is seeking more from the Court. She is pleading that the Court should rule itself on the objective of her Grievances and the investigation process surrounding her harassment complaints, determine the violations to procedural fairness that undermined the process, and set aside CSC's September 2015 decision. She adds that she does not trust any process that may involve or originate from CSC, including the grievance process, and that the Court should intervene on the merits of the issues she is raising.

[49] I do not share Ms. Nosistel's opinion. It is true that CSC failed to make a decision on Ms. Nosistel's Grievances, and that is certainly an error justifying that the Court intervene and set aside CSC's decision on how Ms. Nosistel's Grievances were handled. However, it is not for the Court to determine their merit without first giving CSC the chance to make a decision.

(2) The judicial review and the exhaustion doctrine

[50] A judicial review concerns the lawfulness of an administrative decision, and not the appropriateness of the decision. It is not for a reviewing court to choose the solution that would be the most appropriate in the circumstances. That is particularly true when, as is the case here, the administrative decision-maker has not yet even decided on the issues raised. The norm with respect to a judicial review is to refer the case back for reconsideration by the appropriate administrative decision-maker, and not for the Court to rule on the merits of the case. The Federal Court of Appeal has frequently reiterated that it is not for a court of law to substitute its opinion for that of an administrative decision-maker, but that its role is limited to reviewing the lawfulness of the decision (*Canada (Citizenship and Immigration) v Yansane*, 2017 FCA 48

[*Yansane*] at para 15; *Gauthier v Canada (Attorney General)*, 2008 FCA 75 at para 48; *Ouellette v Canada (Attorney General)*, 2012 FC 801 at para 34). This principle stems from the intent of courts of law to give administrative decision-makers another chance to decide the merits of the matter, especially when the issues clearly fall within their field of expertise and specialization that Parliament conferred upon them (*D'Errico* at paras 15–17).

[51] In this case, the PSLRA sets out a detailed regime for resolving disputes related to the employment conditions of federal public service employees through a grievance process. Section 236 of the PSLRA prevents this Court from addressing the issues raised by Ms. Nosistel and that are the subject of her Grievances. When legislation sets out an administrative process consisting of a series of decisions and remedies, it must be followed to the end, barring exceptional circumstances, before the courts of law may be asked to intervene. The parties must exhaust all adequate remedial recourses when Parliament has given administrative decision-makers the authority to make decisions rather than courts of law: ". . . absent exceptional circumstances, courts should not interfere with ongoing administrative processes until after they are completed, or until the available, effective remedies are exhausted" (*Canada (Border Services Agency) . CB Powell Limited*, 2010 FCA 61 [*CB Powell*] at para 31). Therefore, Ms. Nosistel cannot bypass the grievance procedure set out in the PSLRA and the Agreement by making an application for judicial review (*Vaughan v Canada*, 2005 SCC 11 [*Vaughan*] at paras 30–40; *Halifax (Regional Municipality) v Nova Scotia (Human Rights Commission)*, 2012 SCC 10 at para 52; *Public Service Alliance of Canada v Canada (Treasury Board)*, 2001 FCT 568 at para 65, affd by 2002 FCA 239).

[52] This principle, known as the doctrine of exhaustion of administrative remedies, stipulates that courts should not interfere with ongoing administrative processes to address grievances (*CB Powell* at paras 30–31). This principle prohibiting interlocutory or premature judicial review was notably recognized with regard to the grievance procedure set out in the PSLRA. In *Vaughan*, the Supreme Court stated that "[e]fficient labour relations is undermined when the courts set themselves up in competition with the statutory scheme" (*Vaughan* at para 37); instead, the courts should "defer to the PSSRA grievance procedure" (*Vaughan* at para 33).

[53] I recognize that the doctrine of exhaustion allows certain exceptions. However, the range of situations that allow for this general rule to be set aside are narrow since the threshold for exceptionality is high (*CB Powell* at para 33). Exceptional circumstances may emerge in very rare decisions where a court grants a writ of prohibition or an injunction against administrative decision-makers before or after the administrative process has begun. Conversely, concerns raised about procedural fairness or of bias or partiality "are not exceptional circumstances allowing parties to bypass an administrative process, as long as that process allows the issues to be raised and an effective remedy to be granted" (*CB Powell* at para 33). There are no exceptions in this case that would allow the doctrine of exhaustion to be bypassed.

(3) The directed verdict issue

[54] Relying primarily on LeBlanc J.'s order, Ms. Nosistel argues that her case should receive a directed verdict from the Court, in which the Court should dictate the conclusions and order the corrective measures to obtain the remedies she is seeking. I disagree.

[55] In *McIlvenna . Bank of Nova Scotia (Scotiabank)*, 2017 FC 699 [*Scotiabank*], Justice Boswell explains that the Court's authority to render a "directed verdict" arises from paragraph 18.1(3)(b) of the FCA, which provides that the Court may on judicial review, "…quash, set aside or set aside and refer back for determination in accordance with such directions as it considers to be appropriate… a decision, order, act or proceeding of a federal board, commission or other tribunal" [emphasis added]. However, the Court should exercise considerable restraint in issuing directions that amount to a directed decision, because it gives rise to concerns about the Court accomplishing indirectly what it is not authorized to do directly—namely, substituting its own decision for that made by the administrative decision-maker by compelling the decision-maker to reach a specific conclusion (*Scotiabank* at para 56; *Turanskaya v Canada (Minister of Citizenship and Immigration)*, (1995), 111 FTR 314 (FCTD) at para 6, affd by (1997) 145 DLR (4th) 259 (FCA)).

[56] It is well established that the possibility of rendering a directed verdict, sometimes also referred to as an ordered or imposed verdict, "is an exceptional power that should be exercised only in the clearest of circumstances" and where the case is straightforward and the decision of the Court would be dispositive of the matter (*Canada (Minister of Human Resources Development) v Rafuse*, 2002 FCA 31 [*Rafuse*] at paras 13–14; *Freeman v Canada (Citizenship and Immigration)*, 2013 FC 1065 at paras 78–80). The Court must demonstrate even more restraint in cases where the issue in dispute is essentially factual in nature (*Rafuse* at para 14). This Court has been reluctant to issue directed verdicts where factual matters are central to the decision and there is ambiguity in the evidence (*Scotiabank* at para 62; *Singh v Canada (Citizenship and Immigration)*, 2010 FC 757 at para 53; *Xin v Canada (Citizenship and*

Immigration), 2007 FC 1339 at para 6). In fact, "[t]his is especially the case for eligibility and weighing of evidence, which are central to the mandate of administrative decision-makers" (*Yansane* at para 18).

[57] Some exceptional circumstances that open the door to a directed verdict are situations where the outcome of the case on the merits is a foregone conclusion—in other words the evidence can lead only to one result (*D'Errico* at para 16) [emphasis added]. If there was any doubt about the very narrow window offered to courts of law to issue a directed verdict in applications for judicial review, the Federal Court of Appeal recently reiterated and reconfirmed this in *Canada (Attorney General) v Allard*, 2018 FCA 85 [*Allard*]. Justice Gleason reiterates that, even though a Court conducting a judicial review may order a remedy at its discretion and order a particular outcome, it is only in very specific circumstances that it is appropriate to give instructions to an administrative decision-maker on how to decide an issue that falls within its jurisdiction (*Allard* at paras 44–45; *Canada (Public Safety and Emergency Preparedness) v LeBon*, 2013 FCA 55 at paras 13–14). Gleason J. adds that, while it is impossible to categorize all of the situations that may constitute clearly exceptional circumstances for which a particular remedy may be given, this discretion should be exercised only when there is only one reasonable outcome open to the decision-maker (*Allard* at para 45) [emphasis added]. In cases where, like this one, [TRANSLATION] "the issues in dispute are highly factual and require considerable specialized expertise, the reviewing court should hesitate to conclude that there is only one possible outcome" (*Allard* at para 45).

[58] Clearly, Ms. Nosistel's application for judicial review does not constitute an exceptional situation where the outcome of the decisions from CSC on the merits of Ms. Nosistel's Grievances is a foregone conclusion, where only one interpretation or solution is possible given the circumstances and the evidence on file. Nothing in this case justifies this Court issuing specific instructions restricting the outcome of the decisions to be made on Ms. Nosistel's Grievances. In fact, the file, as it is, does not make it possible to reach clear and unambiguous conclusions for which the responses to be given on the merits of Ms. Nosistel's allegations could be determined. All things considered, I am in no way convinced that the evidence on Ms. Nosistel's Grievances can lead to only one result. In fact, since CSC has not made any decision on the Grievances and the evidentiary record is incomplete and uncertain in all respects, an analysis of Ms. Nosistel's arguments and the evidence on the process of the investigation could lead to several possible outcomes.

[59] In Ms. Nosistel's case, it is up to those with the authority to decide on the grievances to assess the relevant evidence and decide whether the reasons she cites for refuting the Investigation Reports and the process followed are valid. Once those decision-makers have completed their task, the administrative procedure set out in the legislation will be exhausted, and that is when Ms. Nosistel may apply for judicial review to contest the lawfulness of those decisions, if she feels she has been aggrieved.

[60] I note also that Ms. Nosistel has provided no examples of precedents where, when a grievance procedure has not been correctly followed and has not resulted in a decision on the merits of the grievances, the case was not referred back to the administrative decision-maker so

that it could review the file and where instead the Court intervened and substituted itself for the decision-maker to render the decision it considered appropriate. The Court found no such precedent, either.

(4) The scope of the grievance process and the "conditions of employment"

[61] I will pause for a moment to address the new argument Ms. Nosistel presented at the hearing before this Court, which was the allegation that the grievance process set out in sections 208 and 209 of the PSLRA and in article 17 of the Agreement does not apply to her because she is excluded from that process. I will set aside the fact that Ms. Nosistel had never raised that argument prior to the hearing (which would be sufficient to disregard it), but nevertheless note from the outset that Ms. Nosistel has not referred the Court to any authority supporting her position that the grievance process does not apply to her. In fact, in her oral submissions on the topic, Ms. Nosistel cited only one section of the transitional provisions of the PSLRA, that is, section 49, which does not really apply here.

[62] Once again, Ms. Nosistel's new argument is surprising and very perplexing. Nowhere in her June 2017 memorandum or in her August 2016 notice of application did Ms. Nosistel make clear or suggest that the grievance process she herself turned to on three occasions does not apply to her. On the contrary, she has always acted as if she can call upon that process. She makes abundant reference to the process in her memorandum: she describes a [TRANSLATION] "grievance process she followed diligently and within the prescribed time limits" (paragraph 3) and [TRANSLATION] "formal grievances" (paragraph 117) and mentions her three Grievances multiple times and complains of CSC's refusal to address them. After citing the grievance

process many times in her written submissions, and having used it three times without ever raising any doubt about the legitimacy of the process or her ability to use it, it is stunning to see Ms. Nosistel do an about face on this point as she did at the hearing.

[63] In any case, I do not agree with Ms. Nosistel's position that the case cannot be referred back to CSC for reconsideration because she is not subject to the procedures set out in the PSLRA and the Agreement since the position she occupied at the time is apparently excluded from the grievance process. As counsel for the AGC correctly demonstrated at the hearing, the PSLRA and the case law instruct that "Parliament chose to provide a 'right to grieve' on several matters related to employment conditions to all public servants, including those not represented by a bargaining agent and not covered by a collective agreement" (*Chamberlain v Canada (Attorney General)*, 2015 FC 50 at para 39). The right of any public servant to file a grievance is set out in section 208 of the PSLRA. In addition, paragraph 208(1)(b) provides that a public servant may present an individual grievance if he or she feels aggrieved "as a result of any occurrence or matter affecting his or her terms and conditions of employment." This provision has a broad scope, and allows the filing of a grievance on several issues relating to the employment conditions of any public servant.

[64] In other words, even if Ms. Nosistel's position was excluded, in practice, she had the same working conditions as other employees at her level who were covered by a collective agreement, including the right to file an individual grievance if she felt aggrieved as a result of any occurrence or matter affecting her terms and conditions of employment (*Gagnon v Canada (Attorney General)*, 2017 FC 373 [*Gagnon*] at paras 6, 16). As counsel for the AGC clearly

demonstrated at the hearing, sections 208 and 209 of the PSLRA are clearly open to Ms. Nosistel, and positions excluded from collective agreements are covered by the grievance process. Even the grievance arbitration process is open to her, with the exception set out in subsection 209(1) requiring the approval of a bargaining agent to represent her.

[65] Furthermore, there is no doubt that, contrary to Ms. Nosistel's claims, the situation in her complaint is a "matter affecting . . . her terms and conditions of employment" covered by section 208 of the PSLRA. The dispute at the source of all the remedies initiated by Ms. Nosistel stems from her employer-employee relationship and conditions of employment at CSC. Her psychological harassment complaints were against colleagues and the supposedly toxic environment where she worked. Her criticisms about the fairness of the investigation process followed and Ms. Van Allen's decision to accept the conclusions of the Investigation Reports are based on Ms. Nosistel's conditions of employment. Therefore, I consider it undeniable that the complaints that were the subject of the Grievances, and which she described and developed herself in her three grievance forms, are "matter[s] affecting . . . her terms and conditions of employment" for which she could file a complaint under the regime provided by the PSLRA and the Agreement to address grievances.

[66] The case law teaches that the range of conflicts related to "conditions of employment" that may be subject to the grievance process set out in section 208 of the PSLRA is vast (*Bron v Canada (Attorney General)*, 2010 ONCA 71 at paras 15, 30). Thus, the Court of Appeal of Quebec found that the notion of grievance is very broad and includes any matter that the employee feels causes harm or damage to his or her conditions of employment or work,

including, but not limited to, disputes related to harassment, threats, intimidation or harm to reputation (*Cyr v Radermaker*, 2010 QCCA 389 at para 20; *Barber v JT*, 2016 QCCA 1194 [*Barber*] at para 38; *Goulet v Mondoux*, 2010 QCCA 468 at para 6). The definition of "conditions of employment" may include: 1) instructions on work force adjustment for positions considered to be "excluded" from a collective agreement, because they are an integral part of the employee's contract of employment (*Appleby-Ostroff v Canada (Attorney General)*, 2011 FCA 84 at paras 26, 30); 2) the advantages or services the employer provides to its employees, such as consultations under the *Policy on Employee Assistance Program* (*Barber* at para 38); or 3) the public servant's reliability status, as it may be an essential condition of employment to hold certain positions in the core public administration (*Varin v Canada (Public Works and Government Services Canada)*, 2016 FC 213 at para 2).

[67] In short, it is established that the internal grievance process applies to any circumstance or issue that affects the terms or "conditions" of employment, and that this may include cases of discrimination, bad faith or harassment based on labour relations (*Green v Canada (Border Services Agency)*, 2018 FC 414 at paras 11–16; *Gagnon* at para 16). Of course, Ms. Nosistel is alleging violations of procedural fairness in the process of assessing and investigating her complaints of psychological harassment but, far from being divorced from the conditions of her employment, her complaints are directly and intimately tied to them. Given the broad wording of section 208, I do not see how the Grievances are not related to Ms. Nosistel's conditions of employment.

(5) Apprehension of bias

[68] Moreover, I am not convinced that the lack of trust and apprehension of bias alleged by Ms. Nosistel against CSC are sufficient to preclude the case from being referred back to the administrative decision-maker. In *Vaughan,* the Supreme Court warned against accessing the courts to short-circuit the grievance process and avoid having to follow the adjudication provided under it. It also held that absence of recourse to independent adjudication under section 91 of the former scheme (now section 208 of the PSLRA) is not in itself a sufficient reason for the courts to get involved, except on the basis of judicial review.

[69] Moreover, in general, the pleadings filed by Ms. Nosistel do not make it possible to establish the material facts on which her multiple allegations of bias and bad faith by CSC are based. I also find the evidence to be insufficient to support the argument that nearly all of CSC's managers had a conflict of interest or bad faith toward Ms. Nosistel. It cannot be presumed that there is a conflict of interest in the context of addressing grievances: the Supreme Court openly rejected the argument that there is an "institutional bias" in the implementation of grievance processes under the PSLRA by senior officials, regardless of the department or agency (*Vaughan* at para 37).

[70] Ms. Nosistel would have had to present facts disclosing a more particular and individualized conflict problem (as in the whistle-blower cases) for other considerations to come into play (*Vaughan* at para 37). Although Ms. Nosistel's Grievances were handled improperly by CSC, the allegations of bias, conflict of interest and bad faith that Ms. Nosistel is trying to make are vague and non-specific and refer more to her former colleagues at CSC than to the decision-makers in this case. I must note that all of these issues raised by Ms. Nosistel are

essentially factual in nature, and her allegations of bias do not make it possible at this stage to discredit the entire grievance process to the point of convincing the Court not to refer the case back to CSC.

[71] That being said, given the nature of Ms. Nosistel's allegations in her Grievances, precautionary measures are certainly warranted to eliminate the possibility of a future decision-maker having preconceived notions about Ms. Nosistel or her Grievances. In this case, as the AGC proposed, the case must be referred back to a decision-maker who has not been involved in Ms. Nosistel's case to date. There is no doubt that Ms. Nosistel is entitled to an unbiased evaluation of her Grievances, which CSC has thus far denied her.

[72] This is precisely what the order the Court will render in this judgment will give her. Therefore, the Court will order that this case be referred back to a CSC decision-maker who is independent from Ms. Nosistel and at the final grievance level to hear and consider Ms. Nosistel's three Grievances and the allegations she wishes to make against the investigation process that led to CSC's September 2015 decision to accept the conclusions of the Investigation Reports. Ms. Nosistel will then have every opportunity, as counsel for the AGC recognized at the hearing, to be heard and to raise the violations of procedural fairness and the inconsistencies she alleges and upon which CSC has not yet made a decision. She may then file her record and the documents she considers necessary to contest the alleged violations in the process that led to the Investigation Reports and CSC's decision to accept their conclusions. But she must first exhaust the remedies set out in the grievance process before turning to the Court.

C. *Conversion into an action*

[73] The third issue is Ms. Nosistel's application to convert her application for judicial review into an action. Ms. Nosistel is seeking to have her case heard as an action under subsection 18.4(2) of the FCA on the grounds that she could thus obtain damages as compensation for the [TRANSLATION] "direct and indirect, emotional and financial" damages she suffered as a result of the Investigation Reports, which she considers unfair, and the [TRANSLATION] "resignation in disguise" that ensued. Ms. Nosistel thus claims that she is citing subsection 18.4(2) of the FCA for the sake of efficiency (*Canada (Attorney General) v TeleZone Inc.*, 2010 SCC 62 [*TeleZone*]; *Nu-Pharm Inc v Canada (Attorney General)*, 2010 SCC 65; *Canada v Grenier*, 2005 FCA 348).

[74] I do not agree with Ms. Nosistel, and I am not convinced that, in the circumstances of this case, there are grounds to exercise my discretion to allow the conversion Ms. Nosistel is seeking. This is based on both substantive and procedural reasons.

(1) Conversion is not indicated in this case

[75] Substantively, converting this application for judicial review into an action is neither indicated nor equitable under the circumstances.

[76] The discretion to hear an application for judicial review as an action is an exception to the general rule that judicial review proceedings be heard in a summary way (*Slansky v Canada (Attorney General)*, 2013 FCA 199 [*Slansky*] at para 56). In fact, it is well established that this Court is generally not able to award damages in an application for judicial review (*TeleZone*, at paras 26, 52). Subsection 18.4(2) of the FCA does not impose limitations on the considerations

the Court must analyze to exercise this exception to the rule. The case law teaches that this provision must be interpreted broadly and liberally to promote access to justice and government transparency (*Meggeson v Canada (Attorney General)*, 2012 FCA 175 [*Meggeson*] at para 38; *Canada (Citizenship and Immigration) v Hinton*, 2008 FCA 215 at para 44; *Drapeau v Canada (Minister of National Defence)* (1995), 179 NR 398 (FCA)).

[77] That being the case, the conversion of a judicial review into an action is not effected by operation of law, and the Court has the discretion to allow it only "if it considers it appropriate", since each case turns on its own distinct facts and circumstances (*Association des crabiers acadiens Inc v Canada (Attorney General)*, 2009 FCA 357 [*Crabiers Acadiens*] at paras 35–37). The Federal Court of Appeal reiterated that this exception can be made only very rarely, and only in a context where the Court is addressing cases of exceptional scope (*Tsleil-Waututh Nation v Canada (Attorney General)*, 2017 FCA 128 at para 104; *Slansky* at para 56).

[78] Therefore, a judicial review may be converted into an action in rare exceptional circumstances, which the Federal Court of Appeal describes as follows: 1) when an application for judicial review does not provide appropriate procedural safeguards where declaratory relief is sought; 2) when the facts allowing the Court to make a decision cannot be satisfactorily established through mere affidavit evidence; 3) when it is desirable to facilitate access to justice and avoid unnecessary cost and delay; or 4) when it is necessary to address the remedial inadequacies of judicial review, such as the award of damages (*Crabiers Acadiens* at para 39).

[79] These exceptional circumstances do not exist in Ms. Nosistel's case. This is not a case where the application for judicial review does not provide appropriate procedural safeguards or where the facts allowing the Court to make a decision cannot be satisfactorily established through mere affidavit evidence or where a conversion to an action would facilitate access to justice and avoid unnecessary cost and delay. Moreover, this is not a case where, considering the evidence before it, the Court could even consider awarding damages at this stage of the proceedings.

[80] The file prepared by Ms. Nosistel, as detailed as it is in terms of the facts presented in her October 2016 affidavit and her June 2017 memorandum, offers no evidence that could allow the Court to award damages. In fact, Ms. Nosistel presented no testimony, no affidavit or any other document (aside from vague and general allegations and her own correspondence) about the damages she claims to be owed. Nothing in her October 2016 affidavit references or describes any damages she might have suffered or provides any details whatsoever. The only reference is in paragraph 164 of her June 2017 memorandum, but no evidence is provided of the compensation to which Ms. Nosistel claims to be entitled. Furthermore, after she apparently became aware of this shortcoming after the Court hearing, Ms. Nosistel tried to compensate for this by sending a letter to the Court after the hearing in which, among other things, she tried to develop her claims and evidence of damages. The Court did not accept this belated filing of new evidence that was not on record.

[81] It follows that the Court does not have the elements that would allow it to decide on the damages Ms. Nosistel is claiming. Furthermore, at the risk of repeating myself, a specific

administrative regime exists for addressing Ms. Nosistel's grievances and her allegations, and it is available to her. Ms. Nosistel must first exhaust the remedies provided therein and obtain a decision from CSC on the merits of her grievances before applying to the Court to claim damages that may result from an error or violation by CSC. This administrative grievance process provides remedies of which Ms. Nosistel has not yet taken full advantage. The cause of action underlying the damages Ms. Nosistel is seeking to claim is based on the approach CSC apparently took to the investigation process, which Ms. Nosistel considers unsound and harmful, and that is what must be analyzed by the administrative decision-maker in the grievance process.

[82] In this case, the "classic" remedies available to the Court as part of an application for judicial review are completely appropriate. The Court will refer the case back to CSC so that the administrative decision-maker can ensure that Ms. Nosistel's Grievances are handled according to the procedure set out in the PSLRA and in article 17 of the Agreement. Ms. Nosistel will then have to argue her claims in the grievance process according to the regime set out in the Agreement and the PSLRA.

(2) The absence of a motion to convert into an action

[83] Ms. Nosistel's application for conversion into an action has a serious procedural flaw. Ms. Nosistel decided to wait until the last minute to add this claim and conclusion to her June 2017 memorandum, at the very end of the document (at paragraphs 164–167). Neither her August 2016 notice of application nor her October 2016 primary affidavit mention such an application for conversion into an action or refer to the option in subsection 18.4(2) of the FCA.

In addition, Ms. Nosistel made no request for leave of the Court to hear the application for judicial review as if it were an action.

[84] An overview of the case law shows that converting a judicial review into an action under subsection 18.4(2) of the FCA is normally done through a motion presented before the hearing on the merits. The judge or prothonotary who hears the motion disposes of it by order (*Slansky*, at paras 6–8; *Brake v Canada (Attorney General)*, 2018 FC 484 at para 1; *BBM Canada v Research in Motion Limited*, 2011 FC 960 at paras 1, 5; *Vézina v Canada (Defence)*, 2011 FC 79 at para 2). For example, in the *Meggeson* case before the Federal Court of Appeal, the appellant was seeking both administrative law remedies which would have allowed her to obtain the monetary relief she sought through the grievance process, and, in the alternative, a monetary award of damages in the event her administrative law arguments did not succeed (*Meggeson* at para 39). In other words, if the Trial Division concluded that the administrative decision-maker had correctly declined jurisdiction to award her the lost allowances and benefits she claimed through the grievance process, then she was seeking an opportunity to pursue her monetary claims before the Federal Court by asking that her application be treated as an action (*Meggeson* at para 28). The Federal Court of Appeal concluded that the proper course in such circumstances was to adjourn the hearing of the judicial review application and to direct the appellant to submit within a specified timeframe a motion requesting that the application be treated and proceeded with as an action, failing which her monetary claims would be deemed abandoned within the framework of the application (*Meggeson* at para 40).

[85] I agree with the AGC that the vehicle Ms. Nosistel used to make her application for conversion, that is, her memorandum of fact and law, is inappropriate because it provides none of the elements that would allow the Court to address the issue of damages. Furthermore, the Court cannot accept such an application at the stage of the hearing on the merits and simply convert the application for judicial review into an action in order to award the damages without denying the procedural rights of the AGC and preventing it from filing the evidence it might want to file in response to Ms. Nosistel's claims. Therefore, from both Ms. Nosistel and the AGC, the Court does not have a record and evidence that would enable it to decide on the merit of Ms. Nosistel's claims for damages.

[86] Lastly, I must observe that all of the damages Ms. Nosistel briefly describes are highly factual considerations related to the investigation process for her harassment complaints and CSC's resulting decisions, which largely surpass the subject of this application for judicial review before the Court.

D. ***The supplementary affidavit***

[87] I will add a comment on the additional documents Ms. Nosistel wished to file at the Court hearing. Ms. Nosistel tried to file into evidence a supplementary affidavit on the grounds that it could disprove certain [TRANSLATION] "allegations" put forward by the AGC. It was clear from Ms. Nosistel's statements that the additional affidavit and evidence she wished to file had the same objective as the supplementary affidavit Prothonotary Morneau had denied in his order on October 11, 2017. Therefore, this issue of an additional affidavit had already been subject to an order by Prothonotary Morneau, and an order by Locke J. confirming Prothonotary Morneau's

decision (*Nosistel 2* at paras 18–19). Since the hearing, a Federal Court of Appeal order denied Ms. Nosistel leave to appeal those decisions (*Nosistel FCA*). Ms. Nosistel's request to file additional evidence is once again *res judicata*: "[a]n issue, once decided, should not generally be re-litigated to the benefit of the losing party and the harassment of the winner" (*Danyluk v Ainsworth Technologies Inc*, 2001 SCC 44 at para 18; *Régie des rentes du Québec v Canada Bread Company Ltd*, 2013 SCC 46 at para 24; *Eli Lilly Canada Inc v Teva Canada Limited*, 2018 FCA 53 at paras 50–54). There is no reason to override that rule, and the additional evidence Ms. Nosistel wished to file was inadmissible in this case.

[88] That being said, I note that Ms. Nosistel had the opportunity to question the AGC's deponents on their statements if she felt they were false or misleading. However, Ms. Nosistel did not take advantage of this possibility open to her. Lastly, I will reiterate two things. Firstly, the factual considerations related to the investigation process for Ms. Nosistel's harassment complaints and CSC's resulting decisions exceed the subject of this application for judicial review before the Court. Secondly, Ms. Nosistel will also have the opportunity to argue these points (and the associated evidence) during the grievance process CSC must now follow in response to these reasons to consider her Grievances on their merits.

[89] In closing, I note that in attacking the conduct of counsel for CSC and the AGC as she did, Ms. Nosistel is mistaken about the scope of LeBlanc J.'s order. Ms. Nosistel is criticizing the AGC for having reiterated in the defence record his position on the partial settlement offer that LeBlanc J. had refused to allow. However, in deciding as he did, LeBlanc J. simply found that a partial judgment on only certain elements of the file was not in the interests of justice. He in no

way prevented the AGC from making these same arguments before the trial judge or from consenting to part of Ms. Nosistel's application for judicial review as an acceptable solution to the dispute.

IV. Conclusion

[90] Given the lack of transparency CSC demonstrated and the AGC's admission of CSC's failure to address Ms. Nosistel's Grievances, the application for judicial review is partially allowed. The case must be referred back to CSC so that a delegate of the Commissioner who was not involved in the case can respond to Ms. Nosistel's Grievances in accordance with the PSLRA and article 17 of the Agreement and address them according to the grievance process in place. Given the extent of the delays that have already occurred in this case, the decisions on the three Grievances must be made at the final level of the grievance process within sixty (60) days following the date of this Court's judgment.

[91] However, contrary to Ms. Nosistel's claims, this application for judicial review does not concern the Investigation Reports or CSC's September 2015 decision rejecting her harassment complaints. The application concerns CSC's lack of decisions on the Grievances, and that is the sole issue the Court must address. Furthermore, I am not convinced that the conditions are met for the Court to render the directed verdict and order the other corrective measures Ms. Nosistel is seeking. It will be up to CSC to evaluate Ms. Nosistel's Grievances and determine whether, in light of the evidence, her criticisms about how her psychological harassment complaints were handled and the process that led to CSC's September 2015 decision are founded. Lastly, for both

procedural and substantive reasons, this is not a situation where the Court finds that it should convert Ms. Nosistel's application for judicial review into an action.

[92] Pursuant to subsection 400(1) of the *Federal Courts Rules*, SOR/98-106, the Court has discretion to award costs. In this case, I am of the opinion that Ms. Nosistel is entitled to costs even though she was only partially successful, and I find that an amount of $1,500 is sufficient under the circumstances. I note in passing that the AGC had already suggested that costs of that order be awarded to Ms. Nosistel for her motion to obtain a partial judgment. That being said, I do not share Ms. Nosistel's view that higher costs or extrajudicial fees are warranted in this case. I note no reprehensible, scandalous or outrageous conduct that would justify this. Moreover, Ms. Nosistel largely contributed to the great confusion that has obscured this case from the very beginning, by shifting and amending the scope of her notice of application as proceedings advanced in Court and disregarding key elements in Roy J.'s order. The delays and repetition of steps that obstructed the advancement and resolution of this dispute were caused by both parties to this case.

JUDGMENT in file T-1419-16

THIS COURT'S JUDGMENT is that:

1. The application for judicial review of the applicant, Eveda Nosistel, is allowed in part;

2. The decision of the Assistant Commissioner of the Correctional Service of Canada rendered in January 2016 and those of the Commissioner of the Correctional Service of Canada rendered in March and July 2016 are set aside;

3. The grievances filed by the applicant on February 10, 2015, November 18, 2015, and March 4, 2016, are referred back to the Correctional Service of Canada, to the final level of the grievance process, so that the Correctional Service of Canada, through an independent and impartial decision-maker who has never been involved in the applicant's case, can properly conduct its analysis and make decisions on the merits of the issues the applicant raises in her grievances;

4. The decisions on the applicant's grievances must be made within sixty (60) days of the date of this judgment;

5. The applicant is entitled to costs in the amount of $1,500.

"Denis Gascon"

Judge

APPENDIX I

The relevant provisions of the PSLRA read as follows:

INDIVIDUAL GRIEVANCES	GRIEFS INDIVIDUELS
PRESENTATION	PRÉSENTATION
Right of employee	**Droit du fonctionnaire**
208 (1) Subject to subsections (2) to (7), an employee is entitled to present an individual grievance if he or she feels aggrieved	**208 (1)** Sous réserve des paragraphes (2) à (7), le fonctionnaire a le droit de présenter un grief individuel lorsqu'il s'estime lésé :
(a) by the interpretation or application, in respect of the employee, of	**a)** par l'interprétation ou l'application à son égard :
(i) a provision of a statute or regulation, or of a direction or other instrument made or issued by the employer, that deals with terms and conditions of employment, or	**(i)** soit de toute disposition d'une loi ou d'un règlement, ou de toute directive ou de tout autre document de l'employeur concernant les conditions d'emploi,
(ii) a provision of a collective agreement or an arbitral award; or	**(ii)** soit de toute disposition d'une convention collective ou d'une décision arbitrale;
(b) as a result of any occurrence or matter affecting his or her terms and conditions of employment.	**b)** par suite de tout fait portant atteinte à ses conditions d'emploi.
Limitation	**Réserve**
(2) An employee may not present an individual grievance in respect of which an administrative procedure for redress is provided under any Act of Parliament, other than the *Canadian Human Rights Act*.	**(2)** Le fonctionnaire ne peut présenter de grief individuel si un recours administratif de réparation lui est ouvert sous le régime d'une autre loi fédérale, à l'exception de la *Loi canadienne sur les droits de la personne*.

[…]	[…]
REFERENCE TO ADJUDICATION	RENVOI À L'ARBITRAGE
Reference to adjudication	**Renvoi d'un grief à l'arbitrage**
209 (1) An employee who is not a member as defined in subsection 2(1) of the Royal Canadian Mounted Police Act may refer to adjudication an individual grievance that has been presented up to and including the final level in the grievance process and that has not been dealt with to the employee's satisfaction if the grievance is related to	**209 (1)** Après l'avoir porté jusqu'au dernier palier de la procédure applicable sans avoir obtenu satisfaction, le fonctionnaire qui n'est pas un membre, au sens du paragraphe 2(1) de la Loi sur la Gendarmerie royale du Canada, peut renvoyer à l'arbitrage tout grief individuel portant sur :
(a) the interpretation or application in respect of the employee of a provision of a collective agreement or an arbitral award;	**a)** soit l'interprétation ou l'application, à son égard, de toute disposition d'une convention collective ou d'une décision arbitrale;
(b) a disciplinary action resulting in termination, demotion, suspension or financial penalty;	**b)** soit une mesure disciplinaire entraînant le licenciement, la rétrogradation, la suspension ou une sanction pécuniaire;
(c) in the case of an employee in the core public administration,	**c)** soit, s'il est un fonctionnaire de l'administration publique centrale :
(i) demotion or termination under paragraph 12(1)(d) of the *Financial Administration Act* for unsatisfactory performance or under paragraph 12(1)(e) of that Act for any other reason that does not relate to a breach of discipline or misconduct, or	**(i)** la rétrogradation ou le licenciement imposé sous le régime soit de l'alinéa 12(1)d) de la *Loi sur la gestion des finances publiques* pour rendement insuffisant, soit de l'alinéa 12(1)e) de cette loi pour toute raison autre que l'insuffisance du rendement, un manquement à la discipline ou une inconduite,
(ii) deployment under the	**(ii)** la mutation sous le régime

Public Service Employment Act without the employee's consent where consent is required; or

(d) in the case of an employee of a separate agency designated under subsection (3), demotion or termination for any reason that does not relate to a breach of discipline or misconduct.

[…]

BINDING EFFECT

Decision final and binding

214 If an individual grievance has been presented up to and including the final level in the grievance process and it is not one that under section 209 or 238.25 may be referred to adjudication, the decision on the grievance taken at the final level in the grievance process is final and binding for all purposes of this Act and no further action under this Act may be taken on it.

[…]

NO RIGHT OF ACTION

Disputes relating to employment

236 (1) The right of an employee to seek redress by way of grievance for any dispute relating to his or her terms or conditions of employment is in lieu of any right of action that the employee may have in relation

de la *Loi sur l'emploi dans la fonction publique* sans son consentement alors que celui-ci était nécessaire;

d) soit la rétrogradation ou le licenciement imposé pour toute raison autre qu'un manquement à la discipline ou une inconduite, s'il est un fonctionnaire d'un organisme distinct désigné au titre du paragraphe (3).

[…]

DÉCISION DÉFINITIVE

Décision définitive et obligatoire

214 Sauf dans le cas du grief individuel qui peut être renvoyé à l'arbitrage au titre des articles 209 ou 238.25, la décision rendue au dernier palier de la procédure applicable en la matière est définitive et obligatoire et aucune autre mesure ne peut être prise sous le régime de la présente loi à l'égard du grief en cause.

[…]

ABSENCE DE DROIT D'ACTION

Différend lié à l'emploi

236 (1) Le droit de recours du fonctionnaire par voie de grief relativement à tout différend lié à ses conditions d'emploi remplace ses droits d'action en justice relativement aux faits — actions ou omissions — à l'origine du différend.

to any act or omission giving rise to the dispute.

The relevant provisions of the Agreement read as follows:

Article 17: grievance procedure	**Article 17 - Procédure de règlement des griefs**
17.01 In cases of alleged misinterpretation or misapplication arising out of agreements concluded by the National Joint Council (NJC) of the Public Service on items which may be included in a collective agreement and which the parties to this agreement have endorsed, the grievance procedure will be in accordance with section 15.0 of the NJC By-Laws.	**17.01** En cas de fausse interprétation ou application injustifiée présumées découlant des ententes conclues par le Conseil national mixte de la fonction publique sur les clauses qui peuvent figurer dans une convention collective et que les parties à cette dernière ont ratifiées, la procédure de règlement des griefs sera appliquée conformément à la partie 15 des règlements du Conseil national mixte.
Individual grievances	**Griefs individuels**
17.02 Subject to and as provided in Section 208 of the Public Service Labour Relations Act, an employee may present an individual grievance to the Employer if he or she feels aggrieved:	**17.02** Sous réserve de l'article 208 de la Loi sur les relations de travail dans la fonction publique et conformément aux dispositions dudit article, l'employé-e peut présenter un grief contre l'Employeur lorsqu'il ou elle s'estime lésé :
a. by the interpretation or application, in respect of the employee, of: a provision of a statute or regulation, or of a direction or other instrument made or issued by the Employer, that deals with terms and conditions of employment; or a provision of the collective agreement or an	**a)** par l'interprétation ou l'application à son égard : soit de toute disposition d'une loi ou d'un règlement, ou de toute directive ou de tout autre document de l'Employeur concernant les conditions d'emploi; ou soit de toute disposition d'une convention collective ou d'une décision

arbitral award; or	arbitrale; ou
b. as a result of any occurrence or matter affecting his or her terms and conditions of employment	**b)** par suite de tout fait portant atteinte à ses conditions d'emploi.
[…]	[…]
Grievance procedure	**Procédure de règlement des griefs**
17.05 For the purposes of this Article, a grievor is an employee or, in the case of a group or policy grievance, the Association.	**17.05** Pour l'application du présent article, l'auteur du grief est un employé-e ou, dans le cas d'un grief collectif ou de principe, l'Association est l'auteur du grief.
17.06 No person shall seek by intimidation, by threat of dismissal or by any other kind of threat to cause a grievor or the Employer to withdraw a grievance or refrain from exercising the right to present a grievance, as provided in this collective agreement.	**17.06** Il est interdit à toute personne de chercher, par intimidation, par menace de renvoi ou par toute autre espèce de menace, à amener un employé-e s'estimant lésé à renoncer à son grief ou à s'abstenir d'exercer son droit de présenter un grief, comme le prévoit la présente convention.
17.07 The parties recognize the value of informal discussion between employees and their supervisors to the end that problems might be resolved without recourse to a formal grievance. When the parties agree in writing to avail themselves of an informal conflict management system established pursuant to section 207 of the PSLRA, the time limits prescribed in this Grievance Procedure are suspended until either party gives the other notice in writing to the contrary.	**17.07** Les parties reconnaissent l'utilité des discussions informelles entre les employé-e-s et leurs superviseurs et entre l'Association et l'Employeur de façon à résoudre les problèmes sans avoir recours à un grief officiel. Lorsqu'un avis est donné qu'un employé-e ou l'Association, dans les délais prescrits dans la clause 17.15, désire se prévaloir de cette clause, il est entendu que la période couvrant la discussion initiale jusqu'à la réponse finale ne doit pas être comptée comme comprise dans les

délais prescrits lors d'un grief.

[…]

[…]

17.10 There shall be no more than a maximum of three (3) levels in the grievance procedure. These levels shall be as follows:

17.10 La procédure de règlement des griefs comprend trois (3) paliers au maximum. Ces paliers sont les suivants :

a. level 1: first level of management;

a. Palier 1 - premier palier de la direction;

b. level 2: intermediate level of management;

b. Palier 2 - palier intermédiaire de la direction;

c. final level: Chief Executive or deputy head or an authorized representative.

c. Palier final - le premier dirigeant ou l'administrateur général ou son représentant autorisé.

17.11 No Employer representative may hear the same grievance at more than one level in the grievance procedure

17.11 Aucun représentant de l'Employeur ne pourra entendre le même grief à plus d'un palier de la procédure de règlement des griefs.

[…]

[…]

17.17 The Employer shall normally reply to a grievance at any level of the grievance procedure, except the final level, within ten (10) days after the grievance is presented, and within thirty (30) days where the grievance is presented at the final level except in the case of a policy grievance, to which the Employer shall normally respond within thirty (30) days. The Association shall normally reply to a policy grievance presented by the Employer within thirty (30) days.

17.17 À tous les paliers de la procédure de règlement des griefs sauf le dernier, l'Employeur répond normalement à un grief dans les dix (10) jours qui suivent la date de présentation du grief, et dans les trente (30) jours si le grief est présenté au dernier palier, sauf s'il s'agit d'un grief de principe, auquel l'Employeur répond normalement dans les trente (30) jours. L'Association répond normalement à un grief de principe présenté par l'Employeur dans les trente (30) jours.

17.19 The decision given by the Employer at the final level

17.19 La décision rendue par l'Employeur au dernier palier

in the grievance procedure shall be final and binding upon the employee unless the grievance is a class of grievance that may be referred to adjudication.

de la procédure de règlement des griefs est définitive et exécutoire pour l'employé-e, à moins qu'il ne s'agisse d'un type de grief qui peut être renvoyé à l'arbitrage

[…]

[…]

17.24 Where the Employer demotes or terminates an employee for cause pursuant to paragraph 12(1)(c), (d) or (e) of the Financial Administration Act, the grievance procedure set forth in this Agreement shall apply except that the grievance shall be presented at the final level only.

17.24 Lorsqu'un employé fait l'objet d'un licenciement ou rétrogradation motivé déterminé aux termes des alinéas 12(1)c), d) et e) de la Loi sur la gestion des finances publiques, la procédure de règlement des griefs énoncée dans la présente convention s'applique, sauf que le grief devra être présenté au dernier palier seulement.

[…]

[…]

17.26 Any grievor who fails to present a grievance to the next higher level within the prescribed time limits shall be deemed to have abandoned the grievance unless, due to circumstances beyond the grievor's control, the grievor was unable to comply with the prescribed time limits.

17.26 L'employé-e s'estimant lésé qui ne présente pas son grief au palier suivant dans les délais prescrits est jugé avoir abandonné le grief à moins que, en raison de circonstances indépendantes de sa volonté, il ait été incapable de respecter les délais prescrits.

Reference to adjudication

Référence

17.27 (a) Where a grievance has been presented up to and including the final level in the grievance procedure with respect to: the interpretation or application in respect of the employee of a provision of a collective agreement or an arbitral award; a disciplinary action resulting in termination, demotion, suspension or financial penalty; demotion or

17.27 (a) Lorsqu'un grief a été présenté jusqu'au dernier palier inclusivement de la procédure de règlement des griefs au sujet : de l'interprétation ou l'application d'une disposition de la présente convention ou d'une décision arbitrale s'y rattachant, ou d'un licenciement ou une rétrogradation aux termes des

termination under paragraph 12(1)(d) of the *Financial Administration Act* for unsatisfactory performance or under paragraph 12(1)(e) of that act for any other reason that does not relate to a breach of discipline or misconduct, and the grievance has not been dealt with to the grievor's satisfaction, it may be referred to adjudication in accordance with the provisions of the *Public Service Labour Relations Act and Regulations*.

alinéas 12(1)c), d) ou e) de la *Loi sur la gestion des finances publiques*, ou d'une mesure disciplinaire entraînant une suspension ou une sanction pécuniaire, et que le grief n'a pas été réglé à sa satisfaction, ce dernier peut être référé à l'arbitrage aux termes des dispositions de la *Loi sur les relations de travail dans la fonction publique* et de ses règlements d'application.

(b) When an individual or a group grievance has been referred to adjudication and a party to the grievance raises an issue involving the interpretation or application of the Canadian Human Rights Act, that party must, in accordance with the regulations, give notice of the issue to the Canadian Human Rights Commission.

(b) La partie qui soulève une question liée à l'interprétation ou à l'application de la Loi canadienne sur les droits de la personne dans le cadre du renvoi à l'arbitrage d'un grief collectif en donne avis à la Commission canadienne des droits de la personne conformément aux règlements.

(c) The Canadian Human Rights Commission has standing in adjudication proceedings for the purpose of making submissions regarding an issue referred to in paragraph (b).

(c) La Commission canadienne des droits de la personne peut, dans le cadre de l'arbitrage, présenter ses observations relativement à la question soulevée.

(d) Nothing in paragraph (a) above is to be construed or applied as permitting the referral to adjudication of an individual grievance with respect to: any termination of employment under the *Public Service Employment Act*; or any deployment under the *Public Service Employment Act*, other than the deployment

(d) L'alinéa a) ci-dessus n'a pas pour effet de permettre le renvoi à l'arbitrage d'un grief individuel portant sur : soit tout licenciement prévu sous le régime de la *Loi sur l'emploi dans la fonction publique*; ou soit toute mutation effectuée sous le régime de cette loi, sauf celle du fonctionnaire qui a présenté le grief.

of the employee who presented the grievance.

17.28 Before referring an individual grievance related to matters referred to in subparagraph 17.27(a)(i), the employee must obtain the approval of the employee's bargaining agent to represent the employee in the adjudication proceedings.

17.28 Avant de renvoyer à l'arbitrage un grief individuel portant sur une question visée au sous-alinéa 17.27a)(i), l'employé-e doit obtenir l'accord de l'Association de représenter l'employé-e dans la procédure d'arbitrage.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1419-16
STYLE OF CAUSE:	EVEDA NOSISTEL v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	MAY 17, 2018
JUDGMENT AND REASONS:	GASCON J.
DATED:	JUNE 15, 2018

APPEARANCES:

Eveda Nosistel	FOR THE APPLICANT (REPRESENTING HERSELF)
Kétia Calix	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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