

SUPERIOR COURT OF JUSTICE

BETWEEN:

JOANNA GUALTIERI

Plaintiff

and

ATTORNEY GENERAL OF CANADA, FRANK TOWNSON, IAN DAWSON, KEN
PEARSON, JAMES JUDD, GORDON SMITH, GEOFF CLIFFE-PHILLIPS, DONALD W.
CAMPBELL, and LUCIE EDWARDS

Defendants

STATEMENT OF DEFENCE

(Fresh Statement of Claim of Joanna Gualtieri dated March 19, 2004)

1. Except where expressly admitted, the Defendants deny each and every allegation in the fresh statement of claim (the "claim") and put the Plaintiff to the strict proof thereof.
2. The Defendants admit the allegations in paragraphs 4, 6, 14, 18 and 21 of the claim.
3. In answer to paragraph 3 of the claim, the Defendants say that the Government of Canada and the Department of Foreign Affairs and International Trade are not suable entities. The Attorney General of Canada is a properly named Defendant in his capacity as the representative of Her Majesty the Queen in Right of Canada (the "Crown"), pursuant to s. 23 of the *Crown Liability and Proceedings Act* (the "Act"). With respect to the liability of the Crown, which is not admitted, the Defendants plead and rely on sections 3 and 10 of the said *Act*.

4. In answer to the claim as a whole, the Defendants say that the allegations are fabricated and lacking in any substance whatsoever. The Defendants say that the Plaintiff was a problem employee who did not fit in well or get along with others in the Department, and who has falsely claimed to have been a whistle-blower in order to cover up her own shortcomings.

The Defendants

5. In answer to paragraph 10 of the claim, the Defendants say that the Defendant Gordon Smith ("Smith") was Deputy Minister of the Department from August 1994 to June 1997.
6. In answer to paragraph 11 of the claim, the Defendants say that the Defendant Donald Campbell ("Campbell") was Canada's Ambassador to Japan from March 1993 to August 1997 and was Deputy Minister of the Department from August 4, 1997 to June 1, 2000.
7. In answer to paragraph 8 of the claim, the Defendants say that the Defendant James Judd ("Judd") was the Assistant Deputy Minister, Corporate Services, of the Department from July 1995 to October 1996.
8. In answer to paragraph 9 of the claim, the Defendants say that the Defendant Lucie Edwards ("Edwards") was Assistant Deputy Minister, Corporate Services, of the Department from November 1, 1996 to September 6, 1999.
9. In answer to paragraph 7 of the claim, the Defendants say that the Defendant Dawson has occupied the position of Director General of the Bureau of Physical Resources of the Department ("Bureau") from July 1992 to the present.
10. In answer to paragraph 4 of the claim, the Defendants say that the Defendant Townson occupied the position of Director of the Property Program Management Division, later renamed the Property Program Division of the Bureau, from January 1993 to January 1996. From January 1993 to September 1995 of that period, Townson was on secondment from

Treasury Board Secretariat. Townson was the Plaintiff's supervisor from January 1993 to January 1996.

11. In answer to paragraph 6 of the claim, the Defendants say that the Defendant Pearson was Acting Director of the Property Program Division from April 1, 1996 to August 1996 and Director from November 1996 to July 1997. Pearson was the Plaintiff's supervisor during these two periods.
12. In answer to paragraph 5 of the claim, the Defendants say that the Defendant Cliffe-Phillips was Acting Director of the Property Acquisition and Development Division of the Bureau from April 1989 to December 31, 1992 and was Acting Director of the Property Program Division in February and March 1996 and from July 1997 to August 1998. Cliffe-Phillips was the Plaintiff's supervisor during the two periods when he was Acting Director of the Property Program Division.

The Bureau

13. The Bureau is the Special Operating Agency responsible for the provision of office and residential accommodation necessary to support the delivery of programs of the Government of Canada abroad. The Bureau's mandate includes supervision of major projects at Her Majesty's diplomatic missions abroad and the formulation of property and material management policies.
14. As of January 1993, the Bureau consisted of three divisions called Mission Support Services, Property and Program Management and Project Implementation.
15. In 1993, the Bureau became a Special Operating Agency ("SOA"). The Department was granted enhanced financial authorities and the right to access revenues from the sale of properties to support the accommodation program. The Bureau receives annual funding for operational activities and for the Long Term Capital Program, which provides for construction, purchase and major renovation of diplomatic premises abroad.

16. During the material time, 1992-1998, and more particularly after the Bureau acquired SOA status, the Bureau's operations were conducted in accordance with a Project Delivery System following Treasury Board and industry standards for the delivery of accommodations projects, and employing recognized tools for economic and financial analysis to determine relative cost effectiveness. Major projects were preceded by feasibility studies and analysis of options. Decisions were made according to established processes and procedures were based on factors including availability of options, program requirements, affordability, cost-effectiveness, urgency of requirements, local conditions, personnel needs, bilateral and multilateral representational requirements including such intangible factors as Canadian presence and standing, and safety and security of personnel and assets ("strategic and policy considerations").

17. The operations and activities of the Bureau were subject to established systems and procedures of ongoing controls, audits and verification, including the following:
 - a) reporting to senior management in the Department through project status and other reports;
 - b) delivery of the annual Property Business Plan;
 - c) extensive consultations with senior officials in Ottawa and abroad;
 - d) monitoring of programs and practices in conjunction with the Departmental Business Plan
 - e) application of Treasury Board guidelines on residential and office space standards
 - f) reporting to Treasury Board annually in connection with funding for the Long Term Capital Program;
 - g) auditing of Bureau programs and operations by the Audit Division of the Office of the Inspector General of the Department;
 - h) cyclical auditing of the Department as a whole, including Bureau programs and operations, by the Office of the Auditor General of Canada, and reporting to Parliament on the results of such periodic audits;

i) review, analysis and challenge of project specific submission to Ministers by officials of Treasury Board.

18. The Bureau had an annual budget of about \$45 million, which could be increased by property sales revenues of varying amounts annually. The Bureau was often required to make difficult decisions in the various real estate markets in which it operated, which were by definition cyclical in nature, so as to maximize sales revenues in instances where the Department had made the decision to sell a given property.

Plaintiff's Employment History with the Bureau

19. In or about 1992, the Plaintiff was hired into the position of Realty Strategist at the AS 04 level with the Realty Strategy Section ("Section") of the then Property Acquisition and Development Division of the Bureau. The Plaintiff had no work experience with the federal public service or with the management of large real property holdings abroad. She remained in the position of Realty Strategist from about 1992 to February 1993. She was hired by and reported directly to the then-Acting Chief of the Section, John Guenette.
20. Subsequent to February 1993, the Plaintiff and other AS 04 level employees in the Section were asked to report directly to the newly appointed Director of the Division, being the Defendant Townson. The former Acting Chief of the Section, John Guenette, ceased to have any management responsibilities as of about February 1993 and reverted back to his substantive position.
21. Immediately following his appointment, the Defendant Townson moved to appoint all AS 04 employees to newly established and classified positions at the AS 05 level. The justification for the reclassification was that AS 04 employees had been performing the duties of AS 05 level positions and were therefore entitled to the benefits of that position on a retroactive basis. In the case of the Plaintiff, management in the Bureau made the decision to limit the retroactive period of her appointment given that she had not been performing all of the duties of an AS 05 position and given that she had experienced difficulties in

performing her duties as a result of interpersonal conflict with officials at the missions. Following the Plaintiff's threats of a grievance, the Director reluctantly gave her the same retroactivity as that of other AS 04 level employees.

22. Subsequent to February 1993, the Plaintiff held the position of Portfolio Manager for Latin America and the Caribbean at the AS 05 level. The principal duties of the position included planning and analyzing, in consultation with stakeholders, including the missions affected, proposed dispositions, acquisitions and renovations of Crown-leased and owned properties in missions abroad, and submitting recommendations in connection therewith to senior management of the Bureau. The performance of her duties was limited to the geographical region that had been assigned to her.
23. As Portfolio Manager for Latin America and the Caribbean, the Plaintiff was required to liaise with officials and travel to missions that fell in her geographic region. She had interpersonal conflict with officials at the missions, including officials in Kingston, (Jamaica), Sao Paulo (Brazil) and Bridgetown (Barbados). Her inability to get along with officials at the missions necessitated the intervention of management and affected her ability to perform her duties. Much of the interpersonal conflict stemmed not only from the Plaintiff's difficult personality, but also from her inability to understand or refusal to accept the Bureau's mandate, Treasury Board policies and directives, the role of a Real Property Manager, the departmental real property decision-making process and the strategic and policy considerations that went into the Bureau's decision-making process.
24. In or about June 1995, following several interpersonal conflicts with officials at the missions, the Plaintiff was told by her Director, the Defendant Townson, that she would be moved into a new position, yet to be created, as a Leasing Manager. Prior to June 1995, she had advocated the creation of a leasing unit and communicated same to management in the Bureau. The decision to move her was motivated by her inability to get along with officials at the missions and management's belief that her skill set would be better suited for the position of Leasing Manager. At first, the Plaintiff asked for a couple of days to consider the proposal. However, after learning that the position would entail less travel abroad, she

advised management in the Bureau that in her opinion they did not have the required legal authority to deploy her into the new position and, furthermore, that she did not want to occupy the position. Management in the Bureau reviewed her representations and concluded that it did not have the required legal authority to deploy the Plaintiff into a new position. The Plaintiff's refusal to occupy the position was accepted by Bureau management. Contrary to the allegation in the claim, the position of Leasing Manager was never created, the Plaintiff never left her pre-existing position as Portfolio Manager and at no time was she deployed by the Division.

25. Following discussions with management regarding the Leasing Manager position, the Plaintiff left a note on the Defendant Townson's desk advising him that she would be out of the office for the period June 1995 to end of July 1995. She had earlier advised management that she was intending to visit a sister in Syria and would be seeking vacation leave for this purpose.
26. The Plaintiff returned to the office for one day in late July 1995, then left again and did not return until September. Upon her return, she informed management that her paid leave over the summer had been related to a medical condition. She failed, however, to submit forms claiming medical leave.
27. Upon the Plaintiff's return in September, the Director attempted to re-integrate her into her substantive position as Portfolio Manager. However, during her extended absence over the summer, the Director had been required to temporarily assign files in the Latin America and Caribbean Portfolio to other employees in the Division so that operational requirements could be met.
28. In or about April 1996, the Human Resources Directorate of the Department requested that the Plaintiff submit leave forms to account for extended periods of leave for which the Plaintiff had been paid. Despite numerous requests, the Plaintiff refused to submit leave forms to account for paid leave for the periods December 1994, the aforementioned leave for the months of June, July and August 1995, and January 1996.

29. In or about May 1996, the Plaintiff informed management in the Bureau that she would be on sick leave for a period of time and that she was unsure as to when she would return to work. From May 1996 to December 1997, she was on sick leave.
30. From May 1996 to December 1997, the Director of the Division was again required to assign the Plaintiff's files to other employees in the Division so that operational requirements could be met.
31. In late Spring 1997, while the Plaintiff was still on sick leave, the function of Portfolio Manager for Latin America and the Caribbean was merged with that of the United States Portfolio Manager to reflect a departmental reorganization. The Director of the Division made many changes to the geographic regions that had previously been assigned to the Portfolio Managers and as well as changes to the position of Portfolio Manager. For example, the Portfolio Manager functions were severed in two and two positions were created out of every Portfolio Manager position, namely a newly created Portfolio Manager position and a Realty Manager position. All employees that had occupied the Portfolio Manager positions were given a choice between these two positions. The Plaintiff had become a Realty Manager following this reorganization as did many other Portfolio Managers in the Division. Contrary to the allegation in the claim, the Division did not strip the Plaintiff of her duties nor was she the only employee in the Division that was affected by reorganization.
32. While on paid sick leave from the Bureau, the Plaintiff continued to be the source of workplace problems by again refusing to submit leave forms to account for paid sick leave. Instead, she made demands that the Department not record her paid leave or that it extend additional paid sick leave credits to her on the grounds that she had been forced to take leave.

33. In December 1997, the Plaintiff returned to the Bureau. Upon her return, the Acting Director assigned work to her and again made every attempt to re-integrate her into her newly created substantive position of Realty Manager.
34. The Plaintiff had for some time been planning a lawsuit against the Department. Upon her return to the Bureau in December 1997 and up to her final departure from the workplace in April 1998, she displayed an unwillingness to be re-integrated into the operations of the Bureau. She withdrew behind closed doors, showed a poor attitude towards colleagues and management and failed to respond to the work assignments that were given to her. She spent her time photocopying government files for use in her planned lawsuit. She aligned herself with another disgruntled employee, the aforementioned John Guenette, and together they continued to be the source of disruptions in the Bureau's work and a problem that required constant management intervention.
35. In or about April 1998, the Plaintiff was re-classified to the AS 06 level. The re-classification was a result of the reorganization of the Bureau that had occurred in late Spring 1997 and was done following a request by the Plaintiff that she be given the same classification level that had been given to some employees of the Division while she was on sick leave. Her request was considered by management in the Bureau and she was immediately re-classified to the AS-06 level. Despite the fact that the re-classification exercise had no consequence on the Plaintiff's duties and entailed greater remuneration, she later refused to accept the results of the re-classification. Instead, she interpreted the decision as another allegedly illegal deployment and used it as a means for initiating further workplace disruptions with both management and other employees.
36. In June 1998, the Plaintiff and John Guenette filed a notice of refusal to work, alleging danger in the workplace within the meaning of s. 128 of Part II of the *Canada Labour Code*. A safety officer investigated and found that no danger existed. The decision of the safety officer was referred to the Public Service Staff Relations Board. After a hearing, the Board upheld the decision of the safety officer, in a ruling delivered September 25, 1998.

37. From June 1998 to the present, the Plaintiff has been on leave without pay.

No duty of care owed to the Plaintiff regarding Departmental policies or programs

38. The Defendants deny any cause of action in relation to Departmental or Bureau spending policies, programs or priorities, and put the Plaintiff to the strict proof thereof. They specifically deny that any duty of care exists on the part of any representative of the Crown to the Plaintiff arising from government policies or decisions relating to the allocation of resources or the expenditure of public funds. They deny that the Plaintiff has any standing to assert a cause of action in this regard.

39. Further, even if the Plaintiff had standing to assert such a cause of action, which is denied, the Defendants specifically deny that any mismanagement of public funds occurred. The Defendants repeat and rely on the summary of the systems and procedures of ongoing controls, audits and verifications applicable to Bureau spending which is outlined in paragraph 17 of this Defence, and which was followed during the material time. They state that the Plaintiff had a fundamental misunderstanding of, or wilful refusal to accept, the Bureau's mandate, Treasury Board policies and directives, the role of a Real Property Manager, the departmental real property decision-making process and the strategic and policy considerations that went into the Bureau's decision-making process.

40. Moreover, at no time did the Plaintiff identify to her supervisors an instance of mismanagement of public funds. The Defendants state that the Plaintiff's characterization of herself as a whistle-blower is an *ex post facto* fabrication to cover up her own deficiencies and difficulties in the workplace, and is not based on fact.

41. In answer to paragraph 25 of the claim, the Defendants state that many of the allegations that contained therein are outside the Latin America and Caribbean Portfolio and relate to matters which the Plaintiff had no connection with, being files that the Plaintiff did not work on or of which she had little or no direct knowledge. There is no causal link between these

matters and any harm allegedly suffered by the Plaintiff. With respect to those files that the Plaintiff had some connection with, the Defendants deny that the facts give rise to any cause of action cognizable at law. In further reply to the particulars of the allegations, the Defendants state as follows:

- a. With respect to Ankara (Turkey), the Canadian government received lands as a gift from the government of Turkey in or about the 1950's. While the Department had legal title, there was a live issue as to whether the Canadian government was required to reciprocate and grant an equivalent property to the government of Turkey in Canada. The requirement for reciprocity made it difficult for the Bureau to make decisions in respect of these real property holdings. Canada eventually provided an equivalent property in Ottawa as a means of solving the issue of reciprocity;
- b. With respect to Bridgetown (Barbados), the Department had an ownership interest in a property that has embassy buildings and a residence. The embassy buildings and the residence responded to Departmental needs and there was no need to build additional housing on these lands;
- c. In the case of Brussels (Belgium), the Department had ownership of three official residences that were used to hold diplomatic functions. Brussels is the location of the capital of Belgium, NATO Headquarters and the European Parliament, and the Department requires residences that are capable of being used for important diplomatic functions. In any event, the Defendants state that the official residences in Brussels were not underutilized, underdeveloped or vacant. Also, finding suitable replacement properties is an important consideration for the Bureau before it can dispose of any of these properties. The Plaintiff was not responsible for Brussels and has little or no direct knowledge in respect of these residences;
- d. As for Copenhagen (Denmark), the Department had a limited ownership interest in an official residence. Under the deed document, the municipality of Copenhagen was entitled to re-purchase the property at below fair market prices which placed

restrictions on the decisions that could be made in respect of this property. In any event, the Defendants state that the official residence in Copenhagen was by no means underutilized, underdeveloped and/or left vacant. Again, finding suitable replacement properties is an important consideration for the Bureau before it can dispose of any property. Also, the Plaintiff was not responsible for this property and has little or no direct knowledge in respect of these matters;

- e. In the case of the Hague (Netherlands), the official residence was identified by the Bureau as a property that could be disposed of, but only if a suitable replacement property could be identified and under favourable market conditions. The property was by no means underutilized, underdeveloped or left vacant as alleged by the Plaintiff. Again, the Plaintiff had no involvement in this matter;
- f. In Brasilia (Brazil), the Department had four lots that had been purchased prior to the Brazilian government imposing restrictions on the foreign ownership of land. The Department developed two lots into staff quarters, sold one lot and held an ownership interest in one remaining lot. While the Department considered developing this lot, rents in Brasilia were sufficiently low that the development of this lot would not be in the immediate interest of the Department;
- g. In the case of Sao Paulo (Brazil), the Department maintained sufficient office space to meet the needs of the mission, which included space for Immigration Canada and the Canadian International Development Agency ("CIDA"). However, at some point in 1994, both Immigration Canada and CIDA made the decision to close their offices in Sao Paulo and co-locate with the embassy. This sudden and unexpected decision resulted in there being excess office space in Sao Paulo for a brief period of time;
- h. In Tokyo (Japan), the Department made the decision in the 1980's as to enter into an agreement with a real estate developer to develop certain lands owned by the Department. The developer was to pay for the construction of a chancery and a

number of staff quarters, as well as commercial space. In consideration for the foregoing, the developer was given a lease over the commercial space and then, upon the expiration of the lease term, the commercial space is to revert to the Department. The transaction was beneficial to the Department. This transaction occurred in the 1980's, well before the Plaintiff was an employee of the Department;

- i. Also, in the case of Tokyo (Japan), the Department had ownership of a number of staff quarters, which were sold. The proceeds of sale were used to build replacement properties, using Canadian materials and building techniques, for which the Bureau was awarded a prize from the Treasury Board. These replacement properties were used to market Canadian goods and services to Japan. In any event, the Plaintiff was only tangentially involved in the Tokyo file;
- j. In reply to the allegation contained in paragraph 25(b) of the Plaintiff's claim, the Department provided compensation to a butler and a chef in Tokyo (Japan) which included paid accommodations. This compensation package was beneficial to the Department. The servant quarters referred to by the Plaintiff were already occupied by other staff;
- k. In reply to the allegation contained in paragraph 25(c) of the Plaintiff's claim, the Department had an ownership interest in a four bedroom house known as "Nishihara". The Defendants deny that the house was a "mansion" as alleged by the Plaintiff. Nishihara was not suitable for Joseph Caron given the size of his family. The Department eventually sold Nishihara and, while the house was on the market, the house was occupied by visiting workers and officials from various federal government departments. Nishihara did not remain vacant for a period of 3 - 4 years as alleged by the Plaintiff;
- l. The Dublin (Ireland) official residence was a property that was also identified by the Bureau as a property that could be sold. The Bureau, however, was unable to conclude a purchase on a replacement property. The Department retained the

official residence. In the ensuing years, property values in Dublin greatly increased. In any event, the Plaintiff had no involvement in the Dublin file;

- m. In San José (Costa Rica), the Bureau expanded the chancery so as to meet new operational requirements, which included an office for the Canadian International Development Agency ("CIDA"). However, CIDA eventually made the decision to close its office and the Department was left temporarily with excess office space;
 - n. In Mexico City (Mexico), the Bureau was asked by the Geographic Branch of the Department to assist in identifying a suitable location for a new Canadian Trade Centre. The Trade Centre was a federal government pilot project and in response to the ratification of the North American Free Trade Agreement ("NAFTA"). However, with the sudden and unexpected devaluation of the Mexican peso, the Department was required to close down the Mexico Trade Centre since it became difficult to market Canadian goods and services in a depressed market. The closure of the Trade Centre was managed from Mexico and not the Bureau; and
 - o. In the case of Guatemala City (Guatemala), the Department had identified this foreign mission as one of the most dangerous places to work in the western hemisphere and the selection of staff quarters was therefore dictated by considerations going beyond price and size. While the staff quarters in Guatemala City were expensive in comparison to what is suggested by Treasury Board accommodation policy, the Bureau is limited to certain geographical areas in Guatemala City which consequently limited the choice of housing that could be purchased. Also, for single-family houses the Department was required to retain the services of security guards, at significant cost.
42. In answer to the general allegation that the Department was faced with over-housing in Tokyo, Sao Paulo, Brasilia, Kingston and Mexico City, the Defendants state that the Plaintiff failed to understand or refused to accept that Treasury Board policy offers general guidelines on what are deemed to be acceptable housing standards for mission employees.

The policy is by no means law nor is it intended to undermine common-sense decisions. The Bureau must take into account certain realities in choosing staff quarters, including but not limited to travel distances, safety considerations, employee morale, schooling for children of mission employees and maintaining a diversified stock of housing to respond to different family configurations. Also, the Plaintiff failed to understand that each mission was responsible for its leased staff quarters and that this was not a function that was left for the Bureau to perform.

43. In answer to the general allegation that the Defendants failed to dispose of official residences on a timely basis, the Defendants state that the Plaintiff failed to understand that as an SOA, the Bureau was granted enhanced financial authorities and the right to access revenues from the sale of properties to support the accommodation program. As such, in instances where a decision was made to sell a property, it must be disposed of in the most opportune market conditions so that the Bureau may use the revenues to fund the accommodation program. In any event, as stated above, the Defendants have no duty of care to the Plaintiff in respect of decisions made by public authorities involving resource allocation or the expenditure of public funds.

Defendants Acted Within the Scope of Authority

44. The Defendants state that the supervisors of the Plaintiff were at all material times acting in the lawful exercise of their supervisory and decision-making authority and with regard to the normal and ordinary requirements and process of the Bureau and the Department. Similarly, senior management of the Department was at all times acting in the lawful exercise of its managerial and decision-making authority and with regard to the normal and ordinary requirements and processes of the Department. The Defendants state that it was within the scope of their authority to exercise management and decision-making authority and ensure that the work performed by the Plaintiff was satisfactory. The decisions made in respect of the Plaintiff were intended to manage a problem employee and were within the normal scope of generally accepted management practices.

45. The Defendants deny that they acted outside the lawful exercise of their managerial and decision-making authority and if they did, which is not admitted, they say that no harm to the Plaintiff cognizable at law resulted.

Plaintiff Not Subject to Harassment

46. The Defendants state that the federal government employer, Treasury Board, maintained government-wide policies at the material time relating to conflict in the workplace that applied to all government departments. The Department adhered to Treasury Board policies and developed its own harassment policy in the mid-1990's.
47. The Defendants deny that the Plaintiff was subject to any form of harassment. They specifically deny the allegation that the Plaintiff was the object of harassment following her supposed attempts to report misuse or mismanagement of public funds. As stated above, at no time did the Plaintiff identify for her supervisors the misuse or mismanagement of public funds.
48. In the alternative, if the Defendants or any of them harassed the Plaintiff, which is denied, the acts or omissions complained of are not actionable at law.
49. Moreover, in the further alternative and in answer to the claim as a whole, if any of the personally-named Defendants committed an act or omission which is actionable at law, which is denied, such act or omission does not give rise to vicarious liability in any other personally-named Defendant.
50. In answer to paragraph 39 of the claim, the Defendants state as follows:
- a) In respect of paragraph 39 a), the Defendant Dawson was not the Plaintiff's direct supervisor. The few times that the Defendant Dawson met with the Plaintiff to

discuss her work, he provided management guidance to her so that she could improve both the quality of her written work and her understanding of the Bureau's mandate;

- b) In respect of 39 b), the Defendant Dawson was not in agreement with the conclusions that had been reached by the Plaintiff in respect of the Ankara Development Project. While the Turkish Parliament had made mention of reciprocity in the Turkish Parliament, the requirement of reciprocity was never communicated to the Canadian government. Dawson denies having belittled or demeaned the Plaintiff;
- c) In respect of 39c), the Defendants say that the Defendant Dawson offered to assist the Plaintiff if she was interested in moving to another position in the public service as was the case with any other employee that may have sought his assistance to find new employment. The Defendant Dawson denies that he ever wrote a letter to the mission in Ankara to admonish the Plaintiff;
- d) In respect of paragraph 39 d), the Defendant Townson took immediate action to request reclassification of all AS 04 positions in the Bureau. The Plaintiff failed to understand that a reclassification exercise in a public sector context is a complicated human resource process which involves staffing agents beyond an employee's immediate supervisor, and takes time to complete;
- e) In respect of paragraph 39 e), the Defendants deny that they prevented the Plaintiff from pursuing cost saving measures or from undertaking feasibility and planning studies at diplomatic missions. The Plaintiff was free to conduct studies. The Defendants state, however, that the Plaintiff was unable to understand the various strategic and policy considerations that go into such studies and had difficulty in providing a product that could be relied upon by management in the Bureau. By way of example, with respect to Guatemala City, the Plaintiff conducted studies anchored only on price and size and persuaded the Bureau to purchase a house in a

remote location away from the centre of Guatemala City. In making the decision, the Plaintiff did not take into consideration that there was no telephone service available at this particular location, the location was unsuitable for employees with children and the occupants would be required to travel through dangerous parts of Guatemala City in order to access the residence. The recommendation that the Plaintiff provided in Guatemala City is an example of the type of unreliable and narrow advice that she regularly provided to management in the Bureau;

- f) In respect of paragraph 39 f), the Defendants state that if the Plaintiff was not allowed into residential accommodations in Sao Paulo, it was because she had not laid the necessary groundwork and made the necessary arrangements with the mission beforehand. Throughout the course of her dealings with the various missions the Plaintiff acquired the reputation of being a person who had difficulty in getting along with mission employees and did not understand the scope of her responsibilities as Portfolio Manager;

- g) In respect of paragraph 39 g), the Defendants deny having instructed the Plaintiff not to complete a trip report on Sao Paulo because the report allegedly contained information regarding excessive staff quarters. The Defendants state that the Plaintiff had been given a specific mandate by the Bureau which did not include an investigation of staff quarters. However, while on her visit, the Plaintiff conducted an investigation of leased staff quarters which was not within her mandate. Bureau management received a written complaint from the head of mission about the Plaintiff, and took the time to look into the matter before sending a formal response. In its response Bureau management did its best to appear supportive of both parties while bridge-building for the future. The Defendants say that Bureau management went out of its way to defend the Plaintiff in the circumstances and deny having caused any distress, humiliation or stigmatization of the Plaintiff, who was the author of her own misfortune.

- h) In respect of paragraph 39 h), the Defendants deny that the Plaintiff outlined fiscal abuses or personal harassment in her letter to the Defendant Smith, then Deputy Minister. The Plaintiff's letter was one of hundreds of letters sent to the Deputy Minister in response to a circular he had sent to all 8000-plus departmental employees, stating that he was open to communications and inviting them to write to him. The Plaintiff's letter did no more than complain in vague and general terms about the manner in which decisions were made in the Department and invite the Deputy Minister to listen to the more junior members of his department. It did not make any specific allegations;
- i) In respect of paragraph 39 i), the Defendants deny that they prevented the Plaintiff from pursuing feasibility studies or from discussing cost-cutting measures. As was the case for all other Portfolio Managers, the Defendant was free to conduct feasibility studies through the assistance of real estate specialists in the geographic region where the property was located. There are a host of resources that are available from Canada and which are accessed by all employees in the Bureau;
- j) In respect of paragraph 39 j), the Defendants deny that the Plaintiff was subject to a hostile work environment or that she was prevented from doing her job. The Defendants state that the Plaintiff was a problem employee who failed to understand or refused to accept the workings of both the Bureau and the Department. Consequently, management in the Bureau was required to manage the Plaintiff's personal and professional shortcomings;
- k) In respect of paragraph 39 k), the Defendants deny that they used her annual performance appraisal as a means to deny her retroactive pay. The Defendants state that the Plaintiff had experienced difficulties in performing her duties and, unlike other employees in her Division, she had not been performing at the AS 05 level. Accordingly, when her AS 04 position was re-classified, management in the Bureau made the decision to limit the period of retroactivity to a period in time when she had been performing at the AS 05 level. Following her threat of a grievance,

management in the Bureau reluctantly gave her the retroactivity that she had requested, although she was undeserving of such a decision;

- l) In respect of paragraphs 39 l) and m), the Defendants deny that the Division stripped the Plaintiff of her duties or forced her into a deployment. They repeat and rely on paragraph 24 of this Defence in that regard. The attempt to create a leasing analyst position for the Plaintiff was prompted by such things as the Bureau's need to have a leasing specialist, the Plaintiff's legal training and management's desire to assist the Plaintiff in rebuilding some of the relationships that had been damaged with the various missions over the years. Management was acting in good faith to solve a workplace problem by finding a place where her skills could be put to good use and where, it was hoped, she would fit in better;
- m) In respect of paragraph 39 n), the Defendants deny the allegation that the Plaintiff was prevented from participating in the Mexico City Trade Centre closure and the Santiago Chancery projects. In any event, the closure of the Mexico Trade Centre was managed by the mission and not the Bureau;
- n) In respect of paragraph 39 o), the Defendants repeat and rely on the fact that the Plaintiff had a great deal of difficulty getting along with the various missions. The conflicts that were experienced between the Plaintiff and the various missions stemmed from the Plaintiff's difficult personality and not from the Plaintiff's so-called efforts to comply with the mandate of the Bureau;
- o) In respect of paragraph 39 p), the Defendants deny that the reports, project memorandums and status reports were subject to arbitrary and misleading changes. Where the Defendants made changes to the Plaintiff's work, the changes were necessary and within the authority that is vested in management;
- p) In respect of paragraph 39 q), the Defendants deny all such allegations and put the Plaintiff to the strict proof thereof;

- q) In respect of paragraph 39 r), while the Plaintiff met with the Defendant Judd in January 1996, her complaints to him centred on her contention that there were too many people allegedly involved in property decisions and that her advice was not always taken. The Plaintiff did not complain of harassment or raise any instances of mispending. After taking the time to meet with the Plaintiff, who was a junior employee, Judd mentioned his understanding of her concerns to the Defendant Dawson, the person who reported directly to him and who was responsible for the Bureau. By requesting a meeting with the Defendant Judd, the Plaintiff showed a lack of regard for the chain of command in a department where the chain of command plays an important role, and therefore should not be surprised if other employees saw fit to comment adversely on what she had done;
- r) In respect of paragraph 39 s), the Defendants deny that the Plaintiff was removed as Portfolio Manager for Latin America and the Caribbean. The position was merged with the United States Portfolio;
- s) In respect of paragraph 39 t), the Plaintiff in fact returned to work in or about December 1997, not April 1998 as alleged. Upon her return management assigned her work and made efforts to re-integrate her into the day-to-day operations of the Bureau. Instead, the Plaintiff withdrew behind closed doors and aligned herself with John Guenette. Together, the Plaintiff and Guenette spent time preparing their impending lawsuit and became the source of workplace disruptions for both employees and management; and
- t) In respect of 39 u), the Defendants maintain that there was no illegal deployment whatsoever. The Plaintiff requested that she be given the same rate of pay as some of her colleagues in the Bureau following the re-organization of the Division. Management considered her request and re-classified her position from an AS 05 to AS 06.

51. In answer to paragraphs 40-43 of the claim, the Defendants deny that the Plaintiff advised all or any of the Defendants of harassment, abuse or misuse of public funds. They also deny that the Plaintiff pursued internal recourse measures in respect of the allegations made in the statement of claim. The Plaintiff filed a grievance under her collective agreement but failed to pursue it. The Plaintiff failed to avail herself of the help available from her union. The Plaintiff filed a complaint with the Public Service Commission but failed to respond to repeated correspondence from the Commission, forcing the Commission to close its file without being able to carry out an investigation. The Defendants state the various recourse mechanisms available in the public service can result in remedial action and serve employees well. The Plaintiff chose not to avail herself of these mechanisms and cannot now complain that these mechanisms were inadequate.

No Intentional and Negligent Infliction of Mental Suffering

52. In answer to paragraphs 44-50, the Defendants deny that they, either individually or collectively, maintained a work environment that was dangerous to the well-being of the Plaintiff. The Department took all reasonable steps to maintain a harassment-free environment. When the Plaintiff made allegations, the Department dealt with them according to the standard contained in Treasury Board policies and directives. The Defendants also deny that they, either individually or collectively, conducted themselves in a manner so as to intentionally or deliberately cause injury to the Plaintiff, and they put the Plaintiff to the strict proof thereof.

53. The Defendants state that the Plaintiff never raised the issue of alleged mismanagement or misuse of public funds with her supervisors and therefore has no basis in fact or in law to assert that she has suffered injury resulting from her attempts to communicate such matters to management. If the Plaintiff suffered any injury, which is denied, such injury was caused by the Plaintiff's failure or wilful refusal to recognize and follow the lines of authority and

decision-making to which she as a public servant was subject, including but not limited to the line of authority and decision-making in the Bureau and the Department, and the failure or wilful refusal to avail herself of available avenues of recourse and review. Management in the Bureau used generally accepted management practices and techniques to take corrective action to deal with the Plaintiff, a difficult employee lacking basic interpersonal skills and an understanding of the mandate of Property Manager as well as the Bureau.

No Breach of Duty of Care and Negligence

54. In answer to paragraphs 57-59, the Defendants deny that they had a duty of care or breached that duty as alleged, and put the Plaintiff to the strict proof thereof. The Defendants repeat and rely on the preceding paragraphs of this Defence.

No Abuse of Power and Public Office

55. The Defendants deny that they abused their power or public office and put the Plaintiff to the strict proof thereof. At all times they acted lawfully and within their mandate. The allegations made by the Plaintiff are speculative, subjective and mischievous and irrational and without basis either in logic or objective fact.
56. The Defendants acted at all times within the scope of their authority, mandate, job descriptions, applicable law and regulations. The Defendants deny that they prevented the Plaintiff from pursuing her job duties. The Defendants state that they acted within the scope of their respective mandates in managing a problem employee who was a source of workplace disruptions.

No Fiduciary Duty and no Breach

57. The Defendants deny that they owed a fiduciary duty to the Plaintiff. If any such duty existed, which is not admitted, they deny that it was breached in the circumstances
58. The Defendants state that they held no discretion, authority or power of the type giving rise to a fiduciary duty and an ensuing legal obligation. Even if such discretion, power and authority did reside with the Defendants, which is denied, the Defendants did not exercise such power, discretion and authority in a manner so as to injure the Plaintiff.
59. The Defendants state that the Plaintiff's supervisors acted within the scope of their authority and took corrective steps in managing a problem employee which were within the scope of generally accepted management practices and techniques. Such acts do not give rise to a breach of fiduciary duty as alleged by the Plaintiff.

No Intentional Interference with Economic Relations

60. The Defendants deny that any cause of action exists as alleged in relation to a Crown servant. In the alternative, no action or omission on the part of the Defendants intentionally interfered with the Plaintiff's employment contract. The Plaintiff went on sick leave for a given period of time for which she received remuneration. The Plaintiff continues to be a Crown employee. If the Plaintiff has suffered any loss of employment benefits, which is not admitted, this is due to her failure to mitigate her losses.

No Conspiracy to Injure the Plaintiff

61. The Defendants deny that they conspired with each other to harass the Plaintiff in order to stop her from doing her job functions or for any other purpose, and put the Plaintiff to the strict proof thereof. The Defendants were called upon individually and at different times to make management decisions in respect of a difficult employee and these management decisions do not constitute a conspiracy to injure as alleged.

No Infringement of Plaintiff's Fundamental Freedoms

62. The Defendants deny that there has been an infringement of the Plaintiff's freedoms under s. 2(b) of the *Canadian Charter of Rights and Freedoms*. If there was such infringement, which is denied, it fell within reasonable limits prescribed by law for the management of employees in the Public Service of Canada. The Defendants state that it was within the scope of management authority to ensure that the Plaintiff's work met the standards of the Bureau so as to ensure that the right decisions were made in respect of real property matters. While the Plaintiff's work was subject to review and approval, as is the case with the work of all employees in the Bureau, the corrections to the Plaintiff's work were necessary and within the scope of management's complete authority. The Defendants state that the Plaintiff was not open to constructive criticism and consistently failed to understand her role as Portfolio Manager, the Bureau's mandate and the decision-making process in the department.

No Resulting Damages

63. In answer to paragraphs 66-74 and in answer to the claim as a whole, the Defendants deny that the Plaintiff has suffered injury or damages from her employment relationship with the Bureau or from any other action or omission by the individual Defendants, and put the Plaintiff to the strict proof thereof. If the Plaintiff has suffered such injury or damages, which is not admitted, such injury or damages were not foreseeable. The position occupied by the Plaintiff was a staff position and as such, she was subject to the direction and supervision of her immediate supervisor, the Director of the Property Program Management Division or equivalent thereof. In that capacity, it was a term of the Plaintiff's employment and duties that she take direction from management and be subject to the chain of authority and decision-making processes in the Division, Bureau and Department. The directions provided by management in the Bureau fell within the scope of generally accepted management practices and were necessary both to manage the operational requirements of the Bureau and, more specifically, to manage a problem employee.

64. The Defendants put the Plaintiff to the strict proof of her alleged physical and mental disability or injuries and state that if she suffers from such disability or injuries, which is not admitted, these were not caused or exacerbated by any act or omission of the Defendants. The Defendants further say that Plaintiff has failed to mitigate her losses. Further, by claiming medical leave for periods when she was later found to have been well enough to work, the Plaintiff has profited from her alleged disability.

65. The Defendants plead and rely on the *Financial Administration Act*, RSC 1985, c. F-10, the *Federal Real Property Act*, SC 1991, c. 50, the *Department of Foreign Affairs and International Trade Act*, RSC 1985, c. E-22, s. 1; 1995, c. 5, s. 2, the *Public Service Employment Act*, R.S. c. P-32, s. 1, the *Public Service Staff Relations Act*, R.S., c. P-35, s. 1, the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50.

Date: December 3, 2004

Brian J. Saunders
Senior General Counsel
Department of Justice
Civil Litigation Section
East Tower, Bank of Canada Building
234 Wellington Street
Ottawa, Ontario
K1A 0H8

Per: **Linda J. Wall (LSUC# 24288E)**
Alexander M. Gay (LSUC# 37590R)

Tel: (613) 957-4830/948-7806
Fax: (613) 954-1920

Solicitors for the Defendants

TO: Stephen Victor, Q.C. (LSUC# 11317A)
Chad Johnson (LSUC# 47400T)
Kimmel Victor Ages
Barristers and Solicitors
112 Lisgar Street
Ottawa, Ontario
K2P 0C2

(613) 238-1333
(613) 238-8949

Solicitors for the Plaintiffs

JOANNA GUALTIERI

AND ATTORNEY GENERAL OF CANADA, FRANK TOWNSON, MR. IAN DAWSON, MR. KEN PEARSON, MR. JAMES JUDD, MR. GORDON SMITH, MR. GEOFF CLIFFE-PHILLIPS, MR. DONALD W. CAMPBELL, and MS. LUCIE EDWARDS

Plaintiffs

Defendants

(Short title of proceeding)

SUPERIOR COURT OF JUSTICE

Proceeding Commenced at
Ottawa

STATEMENT OF DEFENCE
(Claim of Joanna Gualtieri dated March 19, 2004)

Brian Saunders
Senior General Counsel
Department of Justice
Civil Litigation Section
East Tower, Bank of Canada Building
234 Wellington Street
Ottawa, Ontario
K1A 0H8

Per: Linda J. Wall (LSUC# 24288E)
Alexander M. Gay (LSUC# 37590R)
Tel: (613) 957-4830/948-7406
Fax: (613) 954-1920

Solicitors for the Defendants